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# A BILL FOR AN ACT

RELATING TO TECHNOLOGY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Through Act 2 of the first special session of  
2 2007, the legislature created the Hawaii broadband task force to  
3 provide recommendations on how to advance Hawaii's broadband  
4 capabilities and use. The legislature finds that advanced  
5 broadband services are essential infrastructure for an  
6 innovation economy and a knowledge society in the twenty-first  
7 century. High-speed broadband services at affordable prices are  
8 essential for the advancement of education, health, public  
9 safety, research and innovation, civic participation,  
10 e-government, economic development and diversification, and  
11 public safety and services. The legislature also recognizes the  
12 evolution in the manner in which communications and information  
13 services are delivered to the consumer, including by wireline,  
14 wireless, cable television, and satellite infrastructures, and  
15 that the voice, video, and data services provided over these  
16 infrastructures are converging. To position Hawaii for global



1 competitiveness in the twenty-first century, this Act promotes  
2 the following goals:

3 (1) Access to broadband communications to all households,  
4 businesses, and organizations throughout the State by  
5 2012 at speeds and prices comparable to the average  
6 speeds and prices available in the top three  
7 performing countries in the world;

8 (2) Availability of advanced broadband communications  
9 service on a competitive basis to reduce prices,  
10 increase service penetration, and improve service to  
11 all persons in the state;

12 (3) Increased broadband availability at affordable costs  
13 to low income and other disadvantaged groups,  
14 including by making low-cost, broadband-capable  
15 computers available to eligible recipients;

16 (4) Increased sharing of the infrastructure used to deploy  
17 broadband to speed up implementation, reduce costs to  
18 providers, reduce underlying costs to providers  
19 through incentives rather than eminent domain  
20 procedures, ease deployment of broadband, and ease  
21 entry into a competitive broadband marketplace;



1 (5) Increased, flexible, timely, and responsible access to  
2 public rights-of-way and public facilities for  
3 broadband service providers; and

4 (6) A more streamlined permit approval process that  
5 reduces the time and cost of infrastructure  
6 deployment, to be created jointly by disparate  
7 permitting agencies, stakeholders, and other  
8 interested parties.

9 SECTION 2. The purpose of this Act is to establish the  
10 Hawaii broadband commissioner as an independent agency that is  
11 attached to the department of commerce and consumer affairs for  
12 administrative purposes only and require the commissioner to:

13 (1) Investigate, promote, and ensure the growth and  
14 development of broadband infrastructure within the  
15 state in accordance with the aforementioned goals;

16 (2) Champion the State's broadband, telecommunications,  
17 and video programming services interests before the  
18 federal government, including the United States  
19 Congress, executive branch of the United States, and  
20 Federal Communications Commission; and state and local  
21 agencies, including the governor, the legislature, and  
22 county governments;



- 1           (3) Maintain close working relationships with community  
2           groups, civic associations, industry trade  
3           organizations, industry leaders, and other  
4           stakeholders to ensure that the State's interests and  
5           concerns are understood;
- 6           (4) Develop state policies relating to the provision of  
7           broadband communications services and interstate and  
8           international communications services and facilities  
9           serving or transiting the State of Hawaii;
- 10          (5) Facilitate the construction of shared  
11          telecommunications and broadband infrastructure and  
12          expand the introduction and capabilities of advanced  
13          broadband communications services;
- 14          (6) Consolidate the regulation of telecommunications  
15          carriers currently regulated by the public utilities  
16          commission and cable operators currently regulated by  
17          the director of commerce and consumer affairs, to  
18          create a unified agency to allow businesses providing  
19          broadband, telecommunications, and video programming  
20          services to make their services more readily available  
21          to the public;



1 (7) Promptly examine rate regulation for  
2 telecommunications carriers, including alternatives  
3 such as price cap regulation; and

4 (8) Investigate the implementation of incentive regulation  
5 for telecommunications carriers to increase investment  
6 in broadband infrastructure within the State.

7 SECTION 3. The Hawaii Revised Statutes is amended by  
8 adding a new chapter to be appropriately designated and to read  
9 as follows:

10 "CHAPTER

11 HAWAII BROADBAND COMMISSIONER

12 PART I. GENERAL PROVISIONS

13 § -1 Definitions. As used in this chapter, unless the  
14 context otherwise requires:

15 "Access organization" means any nonprofit organization  
16 designated by the commissioner to oversee the development,  
17 operation, supervision, management, production, or broadcasting  
18 of programs for any channels obtained under section -67, and  
19 any officers, agents, and employees of an organization with  
20 respect to matters within the course and scope of their  
21 employment by the access organization.



1 "Applicant" means a person who initiates an application or  
2 proposal.

3 "Application" means an unsolicited filing.

4 "Basic cable service" means any service tier that includes  
5 the retransmission of local television broadcast signals.

6 "Broadband" means an "always on" data networking service  
7 that enables end users to access the Internet and use a variety  
8 of applications, at minimum speeds set by the commissioner.

9 "Cable franchise" means a nonexclusive initial  
10 authorization, or renewal thereof issued pursuant to this  
11 chapter, whether the authorization is designated as a franchise,  
12 permit, order, contract, agreement, or otherwise, which  
13 authorizes the construction or operation of a cable system.

14 "Cable operator" means any person or group of persons who:

15 (1) Provides cable service over a cable system and  
16 directly or through one or more affiliates owns a  
17 significant interest in the cable system; or

18 (2) Otherwise controls or is responsible for, through any  
19 arrangement, the management and operation of a cable  
20 system.

21 "Cable service" means:

- 1 (1) The one-way transmission to subscribers of video  
2 programming or other programming service; and  
3 (2) Subscriber interaction, if any, which is required for  
4 the selection of video programming or other  
5 programming service.

6 "Cable system" means any facility within this State  
7 consisting of a set of closed transmission paths and associated  
8 signal generation, reception, and control equipment that is  
9 designed to provide cable service which includes video  
10 programming and which is provided to multiple subscribers within  
11 a community, but does not include a facility:

- 12 (1) That serves only to retransmit the television signals  
13 of one or more television broadcast stations;  
14 (2) That serves only subscribers in one or more multiple  
15 unit dwellings under common ownership, control, or  
16 management, unless that facility or facilities uses  
17 any public right-of-way; or  
18 (3) Of a telecommunications carrier subject in whole or in  
19 part to the provisions of part II of this chapter,  
20 except to the extent that those facilities provide  
21 video programming directly to subscribers.



1 "Carrier of last resort" means a telecommunications carrier  
2 designated by the commissioner to provide universal service in a  
3 given local exchange service area determined to be lacking in  
4 effective competition.

5 "Department" means the department of commerce and consumer  
6 affairs.

7 "Designated local exchange service area" means an area as  
8 determined by the commissioner to be best served by designating  
9 a carrier of last resort pursuant to section -43.

10 "Director" means the director of commerce and consumer  
11 affairs.

12 "Facility" includes all real property, antennae, poles,  
13 supporting structures, wires, cables, conduits, amplifiers,  
14 instruments, appliances, fixtures, and other personal property  
15 used by a cable operator in providing service to its  
16 subscribers.

17 "Hawaii broadband commissioner" or "commissioner" has the  
18 same meaning as in section -2.

19 "Institution of higher education" means an academic college  
20 or university accredited by the Western Association of Schools  
21 and Colleges.



1 "Other programming service" means information that a cable  
2 operator makes available to all subscribers generally.

3 "Person" means an individual, partnership, association,  
4 joint stock company, trust, corporation, or governmental agency.

5 "Proposal" means a filing solicited by the commissioner.

6 "Public, educational, or governmental access facilities" or

7 "PEG access facility" means:

8 (1) Channel capacity designated for public, educational,  
9 or governmental uses; and

10 (2) Facilities and equipment for the use of that channel  
11 capacity.

12 "Public, educational, or governmental access organization"  
13 or "PEG access organization" means any person or entity that  
14 provides public, educational, or governmental access services.

15 "Public place" includes any property, building, structure,  
16 or body of water to which the public has a right of access and  
17 use.

18 "School" means an academic and non-college type regular or  
19 special education institution of learning established and  
20 maintained by the department of education or licensed and  
21 supervised by that department.



1 "Service area" means the geographic area for which a cable  
2 operator has been issued a cable franchise.

3 "Telecommunications carrier" or "telecommunications common  
4 carrier" means any person that owns, operates, manages, or  
5 controls any facility used to furnish telecommunications  
6 services for profit to the public, or to classes of users as to  
7 be effectively available to the public, engaged in the provision  
8 of services, such as voice, data, image, graphics, and video  
9 services, that make use of all or part of their transmission  
10 facilities, switches, broadcast equipment, signaling, or control  
11 devices.

12 "Telecommunications service" or "telecommunications" means  
13 the offering of transmission between or among points specified  
14 by a user, of information of the user's choosing, including  
15 voice, data, image, graphics, and video without change in the  
16 form or content of the information, as sent and received, by  
17 means of electromagnetic transmission, or other similarly  
18 capable means of transmission, with or without benefit of any  
19 closed transmission medium, and does not include cable service  
20 as defined in this section.



1 "Video programming" means programming provided by, or  
2 generally considered comparable to programming provided by, a  
3 television broadcast station.

4 § -2 **Hawaii broadband commissioner.** There shall be  
5 established the Hawaii broadband commissioner as an independent  
6 agency that is attached to the department of commerce and  
7 consumer affairs for administrative purposes only. The  
8 implementation of this chapter shall be placed under the  
9 supervision and control of the Hawaii broadband commissioner,  
10 who shall be exempt from chapter 76 and shall be appointed by  
11 the governor, with the advice and consent of the senate.

12 § -3 **Deputy commissioner.** The commissioner may appoint  
13 a deputy commissioner, who shall be exempt from chapter 76. The  
14 commissioner may, at pleasure, dismiss the deputy commissioner.  
15 The deputy commissioner shall have the power to perform any act  
16 or duty assigned by the commissioner and shall be acting  
17 commissioner if, for any reason, the commissioner is unable to  
18 perform the duties of commissioner, until a new commissioner is  
19 appointed.

20 § -4 **Employment of assistants.** (a) The commissioner  
21 may appoint and employ clerks, stenographers, agents, engineers,



1 accountants, and other assistants, with or without regard to  
2 chapter 76; provided that:

3 (1) The commissioner may employ utility and cable analysts  
4 exempt from chapter 76; and

5 (2) Each analyst shall possess at least the minimum  
6 qualifications required of comparable experts in the  
7 relevant industry.

8 (b) The commissioner may appoint and, at pleasure, dismiss  
9 hearings officers as may be necessary, with or without regard to  
10 chapter 76.

11 (c) The commissioner may, with the consent of the  
12 director, utilize staff including clerks, stenographers, agents,  
13 engineers, accountants, hearings officers, and other assistants  
14 from the department, as the commissioner finds necessary for the  
15 performance of the commissioner's functions, and define their  
16 powers and duties.

17 (d) The commissioner may appoint one or more attorneys  
18 independent of the attorney general who shall act as attorney(s)  
19 for the commissioner and shall be exempt from chapter 76. The  
20 commissioner shall define their powers and duties and fix their  
21 compensation.



1 (e) With the consent of the director, the commissioner may  
2 utilize from the department, one or more attorneys independent  
3 of the attorney general who shall act as attorney(s) for the  
4 commissioner and shall be exempt from chapter 76. The  
5 commissioner shall define the powers and duties of the attorneys  
6 and fix their compensation.

7 § -5 **Terms.** The commissioner shall be appointed for a  
8 term of six years and shall not serve more than twelve  
9 consecutive years. Each commissioner shall hold office until  
10 the commissioner's successor is appointed and confirmed.

11 Section 26-34 shall not apply insofar as it relates to the  
12 number of terms and consecutive number of years a commissioner  
13 may serve.

14 § -6 **Salary.** The salary of the commissioner shall be  
15 set equal to that of the chairperson of the public utilities  
16 commission pursuant to section 269-2.

17 § -7 **General powers and duties.** (a) The commissioner  
18 shall have the authority expressly conferred upon the  
19 commissioner by, or reasonably implied from, the provisions of  
20 this chapter.

21 (b) The commissioner shall have general supervision over  
22 all telecommunications carriers and cable operators and shall



1 perform the duties and exercise the powers imposed or conferred  
2 upon it by this chapter.

3 (c) The commissioner has the authority to adopt rules  
4 pursuant to chapter 91 necessary for the purposes of this  
5 chapter.

6 (d) The commissioner shall have general supervision over  
7 public, educational, or governmental access facilities and  
8 public, educational, or governmental access organizations.

9 § -8 Telecommunications development duties. (a) The  
10 commissioner shall ensure that all consumers are provided with  
11 nondiscriminatory, reasonable, and equitable access to high  
12 quality telecommunications network facilities and capabilities  
13 that provide subscribers with sufficient network capacity to  
14 access information services that provide a combination of voice,  
15 data, image, and video, and that are available at just,  
16 reasonable, and nondiscriminatory rates.

17 (b) No later than July 1, 2011, the commissioner shall  
18 study and develop a comprehensive policy to further deploy  
19 broadband communications, including internet access, in the  
20 state. The study shall include consideration of communications  
21 by wire and radio, including satellite and wireless services.  
22 The commissioner shall develop plans and strategies to increase



1 broadband affordability, penetration, and competitive  
2 availability in the state. The plans may include making  
3 low-cost, broadband-capable computers available to eligible  
4 recipients. The commissioner shall regularly update and revise  
5 the commissioner's studies and findings to ensure that the  
6 State's policies and initiatives remain effective in promoting  
7 the State's interests.

8 (c) The commissioner shall develop programs and  
9 initiatives intended to facilitate the deployment of broadband  
10 communications services in the State and access to those  
11 services by users in the state. The commissioner shall fund  
12 these programs and initiatives using funds collected pursuant to  
13 section -51 and deposited in the Hawaii broadband  
14 commissioner special fund pursuant to section -20. In  
15 conjunction with the funds, or alternatively, the commissioner  
16 may seek appropriations of funds from the State.

17 (d) The commissioner shall develop, and routinely update,  
18 a state policy and formulate positions to be taken before  
19 federal agencies regarding areas outside its jurisdiction. The  
20 commissioner shall advocate on behalf of the State's broadband,  
21 telecommunications, and video programming distribution interests  
22 before the United States Congress, executive branch of the



1 United States, and the Federal Communications Commission, and  
2 locally before the governor, the state legislature, and  
3 municipal and county governments. The commissioner shall also  
4 maintain close working relationships with community groups,  
5 civic associations, industry trade associations, industry  
6 leaders, and other stakeholders to ensure that the State's  
7 interests and concerns are understood.

8       **§ -9 Investigative powers.** (a) The commissioner shall  
9 have power to examine:

- 10       (1) The condition of each telecommunications carrier,  
11           cable operator, and PEG access organization;
- 12       (2) The manner in which each telecommunications carrier,  
13           cable operator, and PEG access organization is  
14           operated with reference to the safety or accommodation  
15           of the public;
- 16       (3) The safety, working hours, and wages of employees of  
17           each telecommunications carrier, cable operator, and  
18           PEG access organization;
- 19       (4) The fares and rates charged by each telecommunications  
20           carrier, cable operator, and PEG access organization;



- 1           (5) The value of the physical property of each  
2           telecommunications carrier, cable operator, and PEG  
3           access organization;
- 4           (6) The issuance by each telecommunications carrier, cable  
5           operator, and PEG access organization of stocks and  
6           bonds, and the disposition of the proceeds thereof;
- 7           (7) The amount and disposition of income of each  
8           telecommunications carrier, cable operator, and PEG  
9           access organization, and all financial transactions of  
10          each telecommunications carrier, cable operator, and  
11          PEG access organization;
- 12          (8) Business relations of each telecommunications carrier,  
13          cable operator, and PEG access organization with other  
14          persons, companies, or corporations;
- 15          (9) Compliance of each telecommunications carrier, cable  
16          operator, and PEG access organization with all  
17          applicable state and federal laws and with the  
18          provisions of its franchise, charter, and articles of  
19          association, if any; and
- 20          (10) Classifications, rules, regulations, practices, and  
21          service, and all matters of every nature affecting the  
22          relations and transactions between each



1 telecommunications carrier, cable operator, and PEG  
2 access organization and the public or persons or  
3 corporations.

4 (b) The commissioner may investigate any person acting in  
5 the capacity of or engaging in the business of a  
6 telecommunications carrier within the State of Hawaii without  
7 having a certificate of public convenience and necessity or  
8 other authority previously obtained under and in compliance with  
9 this chapter or the rules adopted under this chapter or chapter  
10 269.

11 (c) Any investigation may be made by the commissioner on  
12 the commissioner's own motion, and shall be made when requested  
13 by the telecommunications carrier, cable operator, or PEG access  
14 organization to be investigated, or by any person upon a sworn  
15 written complaint to the commissioner, setting forth any prima  
16 facie cause of complaint.

17 § -10 **Delegating powers.** Any power, duty, or function  
18 vested in the commissioner by this chapter may be exercised,  
19 discharged, or performed by any employee of the commissioner  
20 employed pursuant to section -4(a), -4(b), or -4(d)  
21 acting in the name and by the delegated authority of the  
22 commissioner. Any power, duty, or function vested in the



1 commissioner by this chapter may be exercised, discharged, or  
2 performed by any employee of the department utilized pursuant to  
3 section -4(c) or -4(e) acting in the name and by the  
4 delegated authority of the commissioner, with the approval of  
5 the director.

6 § -11 Annual report and register of orders. The  
7 commissioner shall prepare and present to the governor, through  
8 the director, in the month of January in each year a report  
9 respecting the commissioner's actions during the preceding  
10 fiscal year. This report shall include:

- 11 (1) Summary information and analytical, comparative, and  
12 trend data concerning major regulatory issues acted  
13 upon and pending before the commissioner;
- 14 (2) Cases processed by the commissioner, including their  
15 dispositions;
- 16 (3) Telecommunications carrier and cable operator  
17 operations, capital improvements, and rates;
- 18 (4) Telecommunications carrier and cable operator  
19 performance in terms of efficiency and quality of  
20 services rendered;
- 21 (5) Environmental matters having a significant impact upon  
22 telecommunications carriers and cable operators;



- 1 (6) Actions of the federal government affecting the  
2 regulation of telecommunications carriers and cable  
3 operators in the State;
- 4 (7) Long- and short-range plans and objectives of the  
5 commissioner; and
- 6 (8) The commissioner's recommendations respecting  
7 legislation and other matters requiring executive and  
8 legislative consideration.

9 Copies of the annual reports shall be furnished by the governor  
10 to the legislature. In addition, the commissioner shall  
11 establish and maintain a register of all of the commissioner's  
12 orders and decisions, which shall be open and readily available  
13 for public inspection.

14 **§ -12 Commissioner's investigative authorities.** In all  
15 investigations made by the commissioner, and in all proceedings  
16 before the commissioner, the commissioner shall have the same  
17 powers respecting administering of oaths, compelling the  
18 attendance of witnesses and the production of documentary  
19 evidence, examining witnesses, and punishing for contempt, as  
20 are possessed by circuit courts. In case of disobedience by any  
21 person to any order of the commissioner, or any subpoena issued  
22 by the commissioner, or of the refusal of any witness to testify



1 to any matter regarding which the witness may be questioned  
2 lawfully, any circuit court, on application by the commissioner,  
3 shall compel obedience as in case of disobedience of the  
4 requirements of a subpoena issued from a circuit court or a  
5 refusal to testify therein. No person shall be excused from  
6 testifying or from producing any book, waybill, document, paper,  
7 electronic record, or account in any investigation or inquiry by  
8 a hearing before the commissioner when ordered to do so, upon  
9 the ground that the testimony or evidence, book, waybill,  
10 document, paper, electronic record, or account required of the  
11 person may tend to incriminate the person or subject the person  
12 to penalty or forfeiture; but no person shall be prosecuted for  
13 any crime, punished for any crime, or subjected to any criminal  
14 penalty or criminal forfeiture for or on account of any act,  
15 transaction, matter, or thing concerning a matter about which  
16 the person has testified under oath or produced documentary  
17 evidence pursuant to a subpoena. Nothing in this section shall  
18 be construed as in any manner giving to any telecommunications  
19 carrier, cable operator, PEG access organization, or any person,  
20 immunity of any kind. The fees and traveling expenses of  
21 witnesses, when mandated to appear, shall be the same as allowed  
22 witnesses in the circuit courts and shall be paid by the State



1 out of any appropriation available for the expenses of the  
2 commissioner.

3       **§ -13 Notices.** Whenever an investigation is undertaken  
4 and a hearing is scheduled by the commissioner, reasonable  
5 notice in writing of such fact and of the subject or subjects to  
6 be investigated shall be given to the telecommunications  
7 carrier, cable operator, PEG access organization, or the person  
8 concerned, and when based upon complaints made to the  
9 commissioner as prescribed section -9, a copy of the  
10 complaint, and a notice in writing of the date and place fixed  
11 by the commissioner for beginning the investigation, shall be  
12 served upon the telecommunications carrier, cable operator, PEG  
13 access organization, or the person concerned, or other  
14 respondent and the complainant not less than two weeks before  
15 the date designated for the hearing.

16       **§ -14 Right to be represented by counsel.** At any  
17 investigation by or proceeding before the commissioner, the  
18 telecommunications carrier, cable operator, PEG access  
19 organization, or the person concerned, or other respondent or  
20 party and any complainant or permitted intervenor shall have the  
21 right to be present and represented by counsel, to present any



1 evidence desired, and to cross-examine any witness who may be  
2 called.

3       § -15 Commissioner may institute proceedings to enforce  
4 chapter. (a) If the commissioner is of the opinion that any  
5 telecommunications carrier, cable operator, PEG access  
6 organization, or any person is violating or neglecting to comply  
7 with any provision of this chapter or of any rule, regulation,  
8 order, or other requirement of the commissioner, or of any  
9 provisions of its certificate of public convenience and  
10 necessity, franchise, charter, contract, or articles of  
11 association, if any, or that changes, additions, extensions, or  
12 repairs are desirable in its plant or service to meet the  
13 reasonable convenience or necessity of the public, or to ensure  
14 greater safety or security, or that any rates, fares,  
15 classifications, charges, or rules are unreasonable or  
16 unreasonably discriminatory, or that in any way it is doing what  
17 it ought not to do, or not doing what it ought to do, the  
18 commissioner shall in writing inform the telecommunications  
19 carrier, cable operator, PEG access organization, or the person  
20 and may institute proceedings before it as may be necessary to  
21 require the telecommunications carrier, cable operator, PEG  
22 access organization, or the person to correct any deficiency.



1 In that event, the commissioner may by order direct the consumer  
2 advocate to appear in the proceeding, to carry out the purposes  
3 of this section. The commissioner may examine into any of the  
4 matters referred to in section -9, notwithstanding that the  
5 same may be within the jurisdiction of any court or other body;  
6 provided that this section shall not be construed as in any  
7 manner limiting or otherwise affecting the jurisdiction of any  
8 court or other body. The commissioner may also revoke or amend  
9 any provision of a certificate of public convenience and  
10 necessity, franchise, charter, or articles of association, if  
11 any, pursuant to section -31 or -68.

12 (b) In addition to any other available remedy, the  
13 commissioner or its enforcement officer may issue citations to  
14 any person acting in the capacity of or engaging in the business  
15 of a telecommunications carrier or cable operator within the  
16 state, without having a certificate of public convenience and  
17 necessity, franchise, or other authority previously obtained  
18 under and in compliance with this chapter or the rules adopted  
19 thereunder. Citations issued and persons cited pursuant to this  
20 subsection shall be subject to the following:

21 (1) The citation may contain an order of abatement and an  
22 assessment of civil penalties as provided in section



1           -23. All penalties collected under this subsection  
2 shall be deposited in the treasury of the State.

3           Service of a citation issued under this subsection  
4 shall be made by personal service whenever possible,  
5 or by certified mail, restricted delivery, sent to the  
6 last known business or residence address of the person  
7 cited;

8           (2) Any person served with a citation under this  
9 subsection may submit a written request to the  
10 commissioner for a hearing, within twenty days from  
11 the receipt of the citation, with respect to the  
12 violations alleged, the scope of the order of  
13 abatement, and the amount of civil penalties assessed.

14           If the person cited under this subsection timely  
15 notifies the commissioner of the request for a  
16 hearing, the commissioner shall afford an opportunity  
17 for a hearing under chapter 91. The hearing shall be  
18 conducted by the commissioner or the commissioner may  
19 designate a hearings officer to hold the hearing;

20           (3) If the person cited under this subsection does not  
21 submit a written request to the commissioner for a  
22 hearing within twenty days from the receipt of the



1 citation, the citation shall be deemed a final order  
2 of the commissioner. The commissioner may apply to  
3 the appropriate court for a judgment to enforce the  
4 provisions of any final order, issued by the  
5 commissioner or designated hearings officer pursuant  
6 to this subsection, including the provisions for  
7 abatement and civil penalties imposed. In any  
8 proceeding to enforce the provisions of the final  
9 order of the commissioner or designated hearings  
10 officer, the commissioner need only show that the  
11 notice was given, that a hearing was held or the time  
12 granted for requesting the hearing has run without a  
13 request, and a certified copy of the final order of  
14 the commissioner or designated hearings officer; and  
15 (4) If any party is aggrieved by the decision of the  
16 commissioner or the designated hearings officer, the  
17 party may appeal to the intermediate appellate court,  
18 in the manner provided for in chapter 602; provided  
19 that the operation of an abatement order shall not be  
20 stayed on appeal unless specifically ordered by the  
21 intermediate appellate court after applying the stay  
22 criteria enumerated in section 91-14(c). The



1 sanctions and disposition authorized under this  
2 subsection shall be separate and in addition to all  
3 other remedies either civil or criminal provided in  
4 any other applicable statutory provision. The  
5 commissioner may adopt rules under chapter 91 as may  
6 be necessary to fully effectuate this subsection.

7 § -16 Appeals. An appeal from an order of the  
8 commissioner under this chapter shall lie, in the manner  
9 provided for in chapter 602. Only a person aggrieved in a  
10 contested case proceeding provided for in this chapter may  
11 appeal from a final order, or a preliminary order if it is of  
12 the nature defined by section 91-14(a). The commissioner may  
13 elect to be a party to all matters, from which an order of the  
14 commissioner is appealed or any action in any court of law  
15 seeking a mandamus, or injunctive or other relief to compel  
16 compliance with this chapter, or any rule or order adopted  
17 thereunder, or to restrain or otherwise prevent or prohibit any  
18 illegal or unauthorized conduct in connection therewith, and  
19 file appropriate responsive briefs or pleadings. If there is no  
20 adverse party to the appeal, the commissioner shall be a party  
21 and shall file responsive briefs or pleadings in defending all  
22 orders. The appearance of the commissioner as a party in



1 judicial proceedings in no way limits the participation of  
2 persons otherwise qualified to be parties on appeal. The appeal  
3 shall not of itself stay the operation of the order appealed  
4 from, but the appellate court may stay the order after a hearing  
5 upon a motion therefor and may impose conditions it deems  
6 proper, including but not limited to requiring a bond, requiring  
7 that accounts be kept, or requiring that other measures be taken  
8 as ordered to secure restitution of the excess charges, if any,  
9 made during the pendency of the appeal, in case the order  
10 appealed from is sustained, reversed, or modified in whole or in  
11 part.

12       § -17 **Alternative dispute resolution.** The commissioner  
13 may require the parties in any matter before the commissioner to  
14 participate in nonbinding arbitration, mediation, or other  
15 alternative dispute resolution process prior to the hearing.

16       § -18 **Perjury.** Any person who wilfully and knowingly  
17 makes under oath any false statement in connection with any  
18 investigation by or proceeding before the commissioner shall be  
19 guilty of perjury and, upon conviction, shall be subject to the  
20 penalty prescribed by law for the offense.

21       § -19 **Telecommunications carriers, cable operators, and**  
22 **PEG access organizations, to furnish information.** Every



1 telecommunications carrier, cable operator, PEG access  
2 organization, or other person subject to investigation by the  
3 commissioner, shall at all times, upon request, furnish to the  
4 commissioner all information that the commissioner may require  
5 respecting any of the matters concerning which the commissioner  
6 is given power to investigate, and shall permit the examination  
7 of its books, records, contracts, maps, and other documents by  
8 the commissioner or any person authorized by the commissioner in  
9 writing to make the examination, and shall furnish the  
10 commissioner with a complete inventory of property under its  
11 control or management in the form as the commissioner may  
12 direct.

13       §   -20   **Hawaii broadband Commissioner special fund.** (a)  
14 There is established in the state treasury a Hawaii broadband  
15 commissioner special fund to be administered by the  
16 commissioner. The proceeds of the fund shall be used by the  
17 commissioner and the division of consumer advocacy of the  
18 department for all expenses incurred in the administration of  
19 this chapter, including, without limitation, the operation of  
20 programs developed by the commissioner to promote universal  
21 availability of communications services. The expenditures of  
22 the commissioner shall be in accordance with legislative



1 appropriations. On a quarterly basis an amount not to exceed  
2 thirty per cent of the proceeds remaining in the fund shall be  
3 allocated to the division of consumer advocacy and deposited in  
4 the compliance resolution fund established pursuant to section  
5 26-9(o).

6 (b) All moneys appropriated to, received, and collected by  
7 the commissioner that are not otherwise pledged, obligated, or  
8 required by law to be placed in any other special fund or  
9 expended for any other purpose shall be deposited into the  
10 Hawaii broadband commissioner special fund including, but not  
11 limited to, all moneys received and collected by the  
12 commissioner pursuant to sections -23, -51, and 92-21.

13 (c) The commissioner shall submit a report to the  
14 legislature detailing all funds received and all moneys  
15 disbursed out of the fund prior to the convening of each regular  
16 session.

17 § -21 **Consumer advocate.** As the director serves as the  
18 consumer advocate to the public utilities commission pursuant to  
19 sections 269-51 through 269-55, the commissioner shall recognize  
20 the director as the consumer advocate in hearings and  
21 proceedings before the commissioner.



1           §   -22   **Communications advisory committee.** There is  
2 established the communications advisory committee. The  
3 committee shall consist of five members appointed by the  
4 governor as provided in section 26-34. The committee shall  
5 advise the commissioner, telecommunications carriers, and cable  
6 operators on matters within the jurisdiction of this chapter at  
7 the request of the commissioner or any telecommunications  
8 carrier or cable operator. The members of the committee shall  
9 serve without pay but shall be entitled to reimbursement for  
10 necessary expenses, including travel expenses, while attending  
11 meetings and while in discharge of their duties.

12           §   -23   **Penalties.** (a) Any telecommunications carrier,  
13 cable operator, or PEG access organization violating,  
14 neglecting, or failing in any particular way to conform to or  
15 comply with this chapter or any lawful order of the  
16 commissioner, including, but not limited to the grounds  
17 specified in section     -68 for cable operators and PEG access  
18 organizations, shall be subject to a civil penalty not to exceed  
19 \$25,000 for each day the violation, neglect, or failure  
20 continues, to be assessed by the commissioner after a hearing in  
21 accordance with chapter 91. The commissioner may order the  
22 telecommunications carrier or cable operator to cease carrying



1 on its business while the violation, neglect, or failure  
2 continues.

3 (b) Notwithstanding subsection (a), any person acting in  
4 the capacity of or engaging in the business of a  
5 telecommunications carrier or a cable operator in the State  
6 without having a certificate of public convenience and  
7 necessity, franchise, or other authority previously obtained  
8 under and in compliance with this chapter and the rules adopted  
9 thereunder may be subject to a civil penalty not to exceed  
10 \$5,000 for each offense, and, in the case of a continuing  
11 violation, \$5,000 for each day that uncertified activity  
12 continues.

13 (c) Upon written application filed within fifteen days  
14 after service of an order imposing a civil penalty pursuant to  
15 this section, the commissioner may remit or mitigate the penalty  
16 upon terms as it deems proper.

17 (d) If any civil penalty imposed pursuant to this section  
18 is not paid within the period as the commissioner may direct,  
19 the attorney general shall institute a civil action for recovery  
20 of the same in circuit court.

21 (e) Any penalty assessed under this section shall be in  
22 addition to any other costs, expenses, or payments for which the



1 telecommunications carrier, cable operator, or PEG access  
2 organization is responsible under this chapter.

3 **PART II. TELECOMMUNICATIONS**

4 **§ -31 Certificates of public convenience and necessity.**

5 (a) No telecommunications carrier, as defined in section  
6 -1, shall commence its business without first having obtained  
7 from the commissioner a certificate of public convenience and  
8 necessity. Applications for certificates shall be made in  
9 writing to the commissioner and shall comply with the  
10 requirements prescribed in the commissioner's rules. The  
11 application for a certificate of public convenience and  
12 necessity shall include the type of service to be performed, the  
13 geographical scope of the operation, the type of equipment to be  
14 employed in the service, the names of competing  
15 telecommunications carriers for the proposed service, a  
16 statement of the applicant's financial ability to render the  
17 proposed service, a current financial statement of the  
18 applicant, and the rates or charges proposed to be charged,  
19 including the rules governing the proposed service.

20 (b) A certificate shall be issued to any qualified  
21 applicant, authorizing the whole or any part of the operations  
22 covered by the application, if it is found that the applicant is



1 fit, willing, and able to properly perform the proposed services  
2 and to conform to the terms, conditions, and rules adopted by  
3 the commissioner, and that the proposed service is, or will be,  
4 required by the present or future public convenience and  
5 necessity; otherwise the application shall be denied. Any  
6 certificate issued shall specify the service to be rendered and  
7 there shall be attached to the exercise of the privileges  
8 granted by the certificate at the time of issuance and from time  
9 to time thereafter, reasonable conditions and limitations as a  
10 public convenience and necessity may require. The  
11 reasonableness of the rates, charges, and tariff rules proposed  
12 by the applicant shall be determined by the commissioner during  
13 the same proceeding examining the present and future  
14 conveniences and needs of the public and qualifications of the  
15 applicant, in accordance with the standards set forth in section  
16 -38.

17 (c) No telecommunications carrier that, as of July 1,  
18 2009, holds a valid certificate of public convenience and  
19 necessity, franchise, or charter enacted or granted by the  
20 legislative or executive authority of the State or its  
21 predecessor governments, or has a bona fide operation as a  
22 telecommunications carrier recognized by the public utilities



1 commission, shall be required to obtain, as a result of the  
2 enactment of this Act, a new certificate of public convenience  
3 and necessity under this section.

4 (d) Any certificate, upon application of the holder and at  
5 the discretion of the commissioner, may be amended, suspended,  
6 or revoked, in whole or in part. The commissioner after notice  
7 and hearing may suspend, amend, or revoke any certificate in  
8 part or in whole, if the holder is found to be in wilful  
9 violation of any of the provisions of this chapter or with any  
10 lawful order or rule of the commissioner adopted thereunder, or  
11 with any term, condition, or limitation of the certificate.

12 § -32 **Location of records.** A telecommunications carrier  
13 shall keep and maintain records, books, papers, accounts, and  
14 other documents as the commissioner may determine are necessary  
15 to effectively regulate the telecommunications carrier, that can  
16 be made immediately accessible when requested by the  
17 commissioner; provided that the original copies are made  
18 available when requested by the commissioner.

19 § -33 **Annual financial reports.** Each annual financial  
20 report required to be filed with the commissioner by  
21 telecommunications carriers shall include a certification that  
22 the report conforms with the applicable uniform system of



1 accounts adopted by the commissioner. The commissioner shall  
2 adopt a uniform system of accounts for this purpose.

3       **§ -34 Telecommunications providers and services.** (a)

4 Notwithstanding any provision of this chapter to the contrary,  
5 the commissioner, upon the commissioner's own motion or upon the  
6 application of any person, and upon notice and hearing, may  
7 exempt a telecommunications carrier or a telecommunications  
8 service from any or all of the provisions of this chapter,  
9 except the requirements of section -36, upon a determination  
10 that the exemption is in the public interest. In determining  
11 whether an exemption is in the public interest, the commissioner  
12 shall consider whether the exemption promotes state policies in  
13 telecommunications, the development, maintenance, and operation  
14 of effective and economically efficient telecommunications  
15 services, and the furnishing of telecommunications services at  
16 just and reasonable rates and in a fair manner in view of the  
17 needs of the various customer segments of the telecommunications  
18 industry. Among the specific factors the commissioner may  
19 consider are:

20       (1) The responsiveness of the exemption to changes in the  
21           structure and technology of the State's  
22           telecommunications industry;



- 1           (2) The benefits accruing to the customers and users of  
2           the exempt telecommunications carrier or service;
- 3           (3) The impact of the exemption on the quality,  
4           efficiency, and availability of telecommunications  
5           services;
- 6           (4) The impact of the exemption on the maintenance of  
7           fair, just, and reasonable rates for  
8           telecommunications services;
- 9           (5) The likelihood of prejudice or disadvantage to  
10           ratepayers of basic local exchange service resulting  
11           from the exemption;
- 12           (6) The effect of the exemption on the preservation and  
13           promotion of affordable, universal, basic  
14           telecommunications services as those services are  
15           determined by the commissioner;
- 16           (7) The resulting subsidization, if any, of the exempt  
17           telecommunications service or provider by nonexempt  
18           services;
- 19           (8) The impact of the exemption on the availability of  
20           diversity in the supply of telecommunications services  
21           throughout the State of Hawaii;



1 (9) The improvements in the regulatory system to be gained  
2 from the exemption, including the reduction in  
3 regulatory delays and costs;

4 (10) The impact of the exemption on promoting innovations  
5 in telecommunications services;

6 (11) The opportunity provided by the exemption for  
7 telecommunications carriers to respond to competition;

8 (12) The potential for the exercise of substantial market  
9 power by the exempt provider or by a provider of the  
10 exempt telecommunications service; and

11 (13) The impact of the exemption on the competitive  
12 availability and affordability of broadband and other  
13 advanced services to consumers.

14 (b) The commissioner shall expedite, where practicable,  
15 the regulatory process with respect to exemptions and shall  
16 adopt guidelines under which each provider of an exempted  
17 service shall be subject to similar terms and conditions.

18 (c) The commissioner may condition or limit any exemption  
19 as the commissioner deems necessary in the public interest. The  
20 commissioner may provide a trial period for any exemption and  
21 may terminate the exemption or continue it for a period and



1 under conditions and limitations as the commissioner deems  
2 appropriate.

3 (d) The commissioner may require a telecommunications  
4 provider to apply for a certificate of public convenience and  
5 necessity pursuant to section -31; provided that the  
6 commissioner may waive any application requirement whenever it  
7 deems the waiver to be in furtherance of the purposes of this  
8 section. The exemptions under this section may be granted in a  
9 proceeding for certification or in a separate proceeding.

10 (e) The commissioner may waive other regulatory  
11 requirements under this chapter applicable to telecommunications  
12 carriers when it determines that competition will serve the same  
13 purpose as public interest regulation.

14 (f) If any provider of an exempt telecommunications  
15 service or any exempt telecommunications carrier elects to  
16 terminate its service, it shall provide notice of this to its  
17 customers, the commissioner, and every telecommunications  
18 carrier providing basic local exchange service in this State.  
19 The notice shall be in writing and given not less than six  
20 months before the intended termination date. Upon termination  
21 of service by a provider of an exempt service or by an exempt  
22 provider, the appropriate telecommunications carrier providing



1 basic local exchange service shall ensure that all customers  
2 affected by the termination receive basic local exchange  
3 service. The commissioner, upon notice and hearing or by rule,  
4 shall determine the party or parties who shall bear the cost, if  
5 any, of access to the basic local exchange service by the  
6 customers of the terminated exempt service.

7 (g) Upon the petition of any person or upon the  
8 commissioner's own motion, the commissioner may rescind any  
9 exemption or waiver granted under this section if, after notice  
10 and hearing, the commissioner finds that the conditions  
11 prompting the granting of the exemption or waiver no longer  
12 apply, or that the exemption or waiver is no longer in the  
13 public interest, or that the telecommunications carrier has  
14 failed to comply with one or more of the conditions of the  
15 exemption or applicable statutory or regulatory requirements.

16 (h) For the purposes of this section, the commissioner,  
17 upon determination that any area of the State has less than  
18 adequate telecommunications service, shall require the existing  
19 telecommunications carrier to show cause as to why the  
20 commissioner should not authorize an alternative  
21 telecommunications carrier for that area under the terms and  
22 conditions of this section.



1           §   -35   **Application of this chapter.** This chapter shall  
2 not apply to commerce with foreign nations, or commerce with the  
3 several states of the United States, except insofar as the same  
4 may be permitted under the Constitution and laws of the United  
5 States; nor shall it apply to telecommunications carriers owned  
6 and operated by the State.

7           §   -36   **Obligations of telecommunications carriers.** In  
8 accordance with conditions and guidelines established by the  
9 commissioner to facilitate the introduction of competition into  
10 the State's telecommunications marketplace, each  
11 telecommunications carrier, upon bona fide request, shall  
12 provide services or information services, on reasonable terms  
13 and conditions, to an entity seeking to provide intrastate  
14 telecommunications, including:

15           (1) Interconnection to the telecommunications carrier's  
16 telecommunications facilities at any technically  
17 feasible and economically reasonable point within the  
18 telecommunications carrier's network so that the  
19 networks are fully interoperable;

20           (2) The current interstate tariff used as the access rate  
21 until such time that the commissioner may adopt a new



- 1 intrastate local service interconnection tariff  
2 pursuant to section -37;
- 3 (3) Nondiscriminatory and equal access to any  
4 telecommunications carrier's telecommunications  
5 facilities, functions, and the information necessary  
6 to the transmission and routing of any  
7 telecommunications service and the interoperability of  
8 both carriers' networks;
- 9 (4) Nondiscriminatory access among all telecommunications  
10 carriers, where technically feasible and economically  
11 reasonable, and where safety or the provision of  
12 existing electrical service is not at risk, to the  
13 poles, ducts, conduits, and rights-of-way owned or  
14 controlled by the telecommunications carrier, or the  
15 commissioner shall authorize access to electric  
16 utilities' poles as provided by the joint pole  
17 agreement, tariffs, rules, orders, or Federal  
18 Communications Commission rules and regulations;
- 19 (5) Nondiscriminatory access to the network functions of  
20 the telecommunications carrier's telecommunications  
21 network, which shall be offered on an unbundled,  
22 competitively neutral, and cost-based basis;



- 1 (6) Telecommunications services and network functions  
2 without unreasonable restrictions on the resale or  
3 sharing of those services and functions; and
- 4 (7) Nondiscriminatory access of customers to the  
5 telecommunications carrier of their choice without the  
6 need to dial additional digits or access codes, where  
7 technically feasible. The commissioner shall  
8 determine the equitable distribution of costs among  
9 the authorized telecommunications carriers that will  
10 use such access and shall establish rules to ensure  
11 access.

12 Where possible, telecommunications carriers shall enter  
13 into negotiations to agree on the provision of services or  
14 information services without requiring intervention by the  
15 commissioner; provided that any agreement shall be subject to  
16 review by the commissioner to ensure compliance with the  
17 requirements of this section.

18 § -37 **Compensation agreements.** The commissioner shall  
19 ensure that telecommunications carriers are compensated on a  
20 fair basis for termination of telecommunications services on  
21 each other's networks, taking into account, among other things,  
22 reasonable and necessary costs to each telecommunications



1 carrier of providing the services in question.  
2 Telecommunications carriers may negotiate compensation  
3 arrangements, which may include "bill and keep," mutual and  
4 equal compensation, or any other reasonable division of revenues  
5 pending tariff access rates to be set by the commissioner. Upon  
6 failure of the negotiations, the commissioner shall determine  
7 the proper methodology and amount of compensation.

8       **§ -38 Regulation of telecommunications carrier rates;**  
9 **ratemaking procedures.** (a) Notwithstanding any law to the  
10 contrary, except for the rates, fares, and charges applicable  
11 for intrastate switched and special access with respect to  
12 wholesale customers, this chapter shall not apply to the rates,  
13 fares, and charges of the telecommunications carrier, and the  
14 classifications, rules, and practices implementing the rates,  
15 fares, and charges. The telecommunications carrier shall not be  
16 required to obtain approval or provide any cost support or other  
17 information to establish or otherwise modify in any manner its  
18 rates, fares, and charges or to bundle any service offerings  
19 into a single or combined pricing package. Notwithstanding the  
20 above, all rates, fares, charges, and bundled service offerings  
21 shall be filed with the public utilities commission for  
22 informational purposes only and become effective immediately



1 upon filing, while providing for a six month transition period  
2 for incumbent local exchange carrier regulation by the public  
3 utilities commission to assist the transfer to the Hawaii  
4 broadband commissioner.

5 (b) All rates, fares, charges, classifications, schedules,  
6 rules, and practices made, charged, or observed by any  
7 telecommunications carrier or by two or more telecommunications  
8 carriers jointly for intrastate switched and special access with  
9 respect to wholesale customers, shall be just and reasonable and  
10 shall be filed with the commissioner.

11 § -39 Cross-subsidies. (a) The commissioner shall  
12 ensure that noncompetitive services shall not cross-subsidize  
13 competitive services. Cross-subsidization shall be deemed to  
14 have occurred:

15 (1) If any competitive service is priced below the total  
16 service long-run incremental cost of providing the  
17 service as determined by the commissioner in  
18 subsection (b); or

19 (2) If competitive services, taken as a whole, fail to  
20 cover their direct and allocated joint and common  
21 costs as determined by the commissioner.



1 (b) The commissioner shall determine the methodology and  
2 frequency with which telecommunications carriers calculate total  
3 service long-run incremental cost and fully allocated joint and  
4 common costs. The total service long-run incremental cost of a  
5 service shall include an imputation of an amount equal to the  
6 contribution that the telecommunications carrier receives from  
7 noncompetitive inputs used by alternative providers in providing  
8 the same or equivalent service.

9 § -40 **Separate affiliate audits.** The commissioner shall  
10 receive the results of joint federal and state audits required  
11 for companies to operate separate affiliates, and obtain and pay  
12 for a joint federal and state audit every two years from an  
13 independent auditor pursuant to Title 47 United States Code  
14 Section 272(d). The commissioner shall make the results of  
15 joint federal and state audits available for public inspection.

16 § -41 **Unfair or deceptive acts or practices.** The  
17 commissioner shall adopt rules prohibiting unfair or deceptive  
18 acts or practices by telecommunications carriers and  
19 telecommunications service providers including resellers and  
20 aggregators of telecommunications services. Unfair or deceptive  
21 acts or practices may include unauthorized changes in subscriber  
22 carrier selections.



1           §   -42 Lifeline telephone rates. (a) The commissioner  
2 shall implement a program to achieve lifeline telephone rates  
3 for residential telephone users. The commissioner may achieve  
4 lifeline telephone rates by using funds collected pursuant to  
5 section     -51 and deposited in the Hawaii broadband  
6 commissioner special fund pursuant to section     -20. In  
7 conjunction with such funds, or alternatively, the commissioner  
8 may seek appropriations of funds from the State.

9           (b) For the purposes of this section, "lifeline telephone  
10 rate" means a discounted rate for residential telephone users  
11 identified as elders with limited income and the handicapped  
12 with limited income as designated by the commissioner.

13          (c) The commissioner shall require every  
14 telecommunications carrier providing local telephone service to  
15 file a schedule of rates and charges providing a rate for  
16 lifeline telephone subscribers.

17          (d) Nothing in this section shall preclude the  
18 commissioner from changing any rate established pursuant to  
19 subsection (a) either specifically or pursuant to any general  
20 restructuring of all telephone rates, charges, and  
21 classifications.



1           **§ -43 Carriers of last resort.** (a) The commissioner  
2 may define and designate local exchange service areas where the  
3 commissioner has determined that a single provider will be the  
4 most appropriate way to ensure service for these areas.

5           (b) The commissioner shall determine the level of service  
6 that is appropriate for each designated local exchange service  
7 area and shall invite telecommunications providers to bid for a  
8 level of service that is appropriate. The successful bidder  
9 shall be designated as the carrier of last resort for the  
10 designated local exchange service area for a period of time and  
11 upon conditions set by the commissioner. In determining the  
12 successful bidder, the commissioner shall take into  
13 consideration the level of service to be provided, the  
14 investment commitment, and the length of the agreement, in  
15 addition to the other qualifications of the bidder.

16           (c) The commissioner shall adopt rules pursuant to  
17 chapter 91 to carry out this section or adopt the rules provided  
18 in chapter 6-81 of the Hawaii Administrative Rules, which were  
19 in effect on July 1, 2009.

20           **§ -44 Telecommunications relay services for the deaf,**  
21 **persons with hearing disabilities, and persons with speech**  
22 **disabilities.** (a) The commissioner shall implement intrastate



1 telecommunications relay services for the deaf, persons with  
2 hearing disabilities, and persons with speech disabilities.

3 (b) The commissioner shall investigate the availability of  
4 experienced providers of quality telecommunications relay  
5 services for the deaf, persons with hearing disabilities, and  
6 persons with speech disabilities. The provision of these  
7 telecommunications relay services to be rendered on or after  
8 July 1, 1992, shall be awarded by the commissioner to the  
9 provider or providers the commissioner determines to be best  
10 qualified to provide these services. In reviewing the  
11 qualifications of the provider or providers, the commissioner  
12 shall consider the factors of cost, quality of services, and  
13 experience, and other factors as the commissioner deems  
14 appropriate.

15 (c) If the commissioner determines that the  
16 telecommunications relay service can be provided in a cost-  
17 effective manner by a service provider or service providers, the  
18 commissioner may require every intrastate telecommunications  
19 carrier to contract with the provider or providers for the  
20 provision of the telecommunications relay service under the  
21 terms established by the commissioner.



1 (d) The commissioner may establish a surcharge to collect  
2 customer contributions for telecommunications relay services  
3 required under this section.

4 (e) The commissioner may adopt rules to establish a  
5 mechanism to recover the costs of administering and providing  
6 telecommunications relay services required under this section.

7 (f) The commissioner shall require every intrastate  
8 telecommunications carrier to file a schedule of rates and  
9 charges and every provider of telecommunications relay service  
10 to maintain a separate accounting for the costs of providing  
11 telecommunications relay services for the deaf, persons with  
12 hearing disabilities, and persons with speech disabilities.

13 (g) Nothing in this section shall preclude the  
14 commissioner from changing any rate established pursuant to this  
15 section either specifically or pursuant to any general  
16 restructuring of all telephone rates, charges, and  
17 classifications.

18 (h) As used in this section:

19 "Telecommunications relay services" means telephone  
20 transmission services that provide an individual who has a  
21 hearing or speech disability, the ability to engage in  
22 communication by wire or radio with a hearing individual in a



1 manner that is functionally equivalent to the ability of an  
2 individual who does not have a hearing or speech disability to  
3 communicate using wire or radio voice communication services.  
4 "Telecommunications relay services" includes services that  
5 enable two-way communication using text telephones or other  
6 non-voice terminal devices, speech-to-speech services, video  
7 relay services, and non-English relay services.

8       **§ -45 Telecommunications number portability.** The  
9 commissioner shall ensure that telecommunications number  
10 portability within an exchange is available, upon request, as  
11 soon as technically feasible and economically reasonable. An  
12 impartial entity shall administer telecommunications numbering  
13 and make the numbers available on an equitable basis.

14       **§ -46 Emergency telephone service; capital costs;**  
15 **ratemaking.** (a) A telecommunications carrier providing local  
16 exchange telecommunications services may recover the capital  
17 cost and associated operating expenses of providing a statewide  
18 enhanced 911 emergency telephone service in the public switched  
19 telephone network, through a telephone line surcharge.

20       (b) The commissioner shall require every  
21 telecommunications carrier providing statewide enhanced 911  
22 emergency telephone service to maintain a separate accounting of



1 the costs of providing an enhanced 911 emergency service and the  
2 revenues received from related surcharges. The commissioner  
3 shall further require that every telecommunications carrier  
4 imposing a surcharge shall identify on all customer billing  
5 statements the separate line item for enhanced 911 emergency  
6 service.

7 (c) This section shall not preclude the commissioner from  
8 changing any rate, established pursuant to this section, either  
9 specifically or pursuant to any general restructuring of all  
10 telephone rates, charges, and classifications.

11 **§ -47 Issuance of securities.** (a) A telecommunications  
12 carrier corporation may, on securing the prior approval of the  
13 commissioner, and not otherwise, issue stocks and stock  
14 certificates, bonds, notes, and other evidences of indebtedness,  
15 payable at periods of more than twelve months after the date  
16 thereof, for the following purposes and no other, namely:

- 17 (1) For the acquisition of property;
- 18 (2) For the construction, completion, extension, or  
19 improvement of or addition to its facilities or  
20 service;
- 21 (3) For the discharge or lawful refunding of its  
22 obligations;



1           (4) For the reimbursement of moneys actually expended from  
2           income or from any other moneys in its treasury not  
3           secured by or obtained from the issue of its stocks or  
4           stock certificates, or bonds, notes, or other  
5           evidences of indebtedness; and

6           (5) For any of the aforesaid purposes except maintenance  
7           of service, replacements, and substitutions not  
8           constituting capital expenditure in cases where the  
9           corporation has kept its accounts for such  
10          expenditures in such manner as to enable the  
11          commissioner to ascertain the amount of moneys so  
12          expended and the purposes for which the expenditures  
13          were made, and the sources of the funds in its  
14          treasury applied to the expenditures.

15          (b) As used in this section, "property" and "facilities,"  
16          mean property and facilities used in all operations of a  
17          telecommunications carrier corporation whether or not included  
18          in its operations or rate base. A telecommunications carrier  
19          corporation may not issue securities to acquire property or to  
20          construct, complete, extend, improve, or add to its facilities  
21          or service if the commissioner determines that the proposed



1 purpose will have a materially adverse effect on its  
2 telecommunications carrier operations.

3 All stocks and every stock certificate, bond, note, or  
4 other evidence of indebtedness of a telecommunications carrier  
5 corporation not payable within twelve months, issued without an  
6 order of the commissioner authorizing the same, then in effect,  
7 shall be void.

8 § -48 Issuance of voting stock; restrictions. (a) For  
9 the purposes of this section:

10 "Foreign corporation" means a foreign corporation as  
11 defined in section 235-1 or a corporation in which a majority of  
12 the voting stock is held by a single foreign corporation as  
13 defined in section 235-1.

14 "Nonresident alien" means a person not a citizen of the  
15 United States who is not defined as a resident alien by the  
16 United States Citizenship and Immigration Services.

17 (b) No more than twenty-five per cent of the issued and  
18 outstanding voting stock of a corporation that is organized  
19 under the laws of the State and that owns, controls, operates,  
20 or manages any plant or equipment, or any part thereof, as a  
21 telecommunications carrier within the definition set forth in  
22 section -1 shall be held, whether directly or indirectly, by



1 any single foreign corporation or any single nonresident alien,  
2 or held by any person, unless prior written approval is obtained  
3 from the commissioner, or unless a transaction is exempt. An  
4 exempt transaction is:

- 5 (1) Any purchase or sale by an underwriter; or  
6 (2) A transaction to acquire shares of a corporation with  
7 less than one hundred shareholders and less than  
8 \$1,000,000 in assets.

9 Every assignment, transfer, contract, or agreement for  
10 assignment or transfer of any shares in violation of this  
11 section shall be void and of no effect; and no such transfer  
12 shall be made on the books of the corporation. Nothing in this  
13 section shall be construed to make illegal the holding of stock  
14 lawfully held, directly or indirectly, prior to June 4, 1977.

15 **§ -49 Acquisition of stock of another telecommunications**  
16 **carrier.** No person or entity shall purchase or acquire, take or  
17 hold, any part of the capital stock of any telecommunications  
18 carrier corporation, organized or existing under or by virtue of  
19 the laws of the State, without having been first authorized to  
20 do so by the order of the commissioner. Every assignment,  
21 transfer, contract, or agreement for assignment or transfer of  
22 any stock by or through any person or corporation to any



1 corporation or otherwise in violation of this section shall be  
2 void and of no effect; and no such transfer shall be made on the  
3 books of any telecommunications carrier. Nothing in this  
4 section shall be construed to make illegal the holding of stock  
5 lawfully acquired before July 1, 1933.

6       **§ -50 Merger and consolidation of telecommunications**  
7 **carriers.** No telecommunications carrier corporation shall sell,  
8 lease, assign, mortgage, or otherwise dispose of or encumber the  
9 whole or any part of its road, line, plant, system, or other  
10 property necessary or useful in the performance of its duties to  
11 the public, or any franchise or permit, or any right thereunder,  
12 nor by any means, directly or indirectly, merge or consolidate  
13 with any other person or entity without first having secured  
14 from the commissioner an order authorizing it so to do. Every  
15 sale, lease, assignment, mortgage, disposition, encumbrance,  
16 merger, or consolidation, made other than in accordance with the  
17 order of the commissioner shall be void.

18       **§ -51 Finances; regulatory fee.** (a) There shall be  
19 paid to the commissioner in the months of July and December of  
20 each year, by each telecommunications carrier subject to this  
21 chapter, a fee set by the commissioner not to exceed one-fourth  
22 of one per cent of the gross income from the telecommunications



1 carrier's business during the preceding year, or the sum of \$30,  
2 whichever is greater. The commissioner shall set the fee amount  
3 based on its projected budget for the year to administer and  
4 enforce this chapter. This fee shall be deposited with the  
5 director of finance to the credit of the Hawaii broadband  
6 commissioner special fund created pursuant to section -20.

7 (b) Each telecommunications carrier paying a fee under  
8 subsection (a) may impose a surcharge to recover the amount paid  
9 above one-eighth of one per cent of gross income. The surcharge  
10 imposed shall not be subject to the notice, hearing, and  
11 approval requirements of this chapter; provided that the  
12 surcharge may be imposed by the telecommunications carrier only  
13 after thirty days' notice to the commissioner.

14 **§ -52 Injury to carrier property.** Any person who  
15 injures or destroys, through want of proper care, any necessary  
16 or useful facility, equipment, or property of any  
17 telecommunications carrier shall be liable to the  
18 telecommunications carrier for all damages sustained thereby.  
19 The measure of damages to the facility, equipment, or property  
20 injured or destroyed shall be the cost to repair or replace the  
21 property injured or destroyed including direct and allocated  
22 costs for labor, materials, supervision, supplies, tools, taxes,



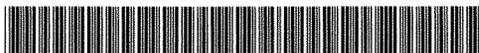


1 (b) No cable operator that, as of July 1, 2009, holds a  
2 franchise or charter enacted or granted by the legislative or  
3 executive authority of the State or its predecessor governments,  
4 or has a bona fide operation as a cable operator heretofore  
5 recognized by the department, shall be required to obtain, as a  
6 result of the enactment of this chapter, a new franchise under  
7 this section.

8 § -63 Application or proposal for cable franchise; fee;  
9 certain requirements. (a) No cable franchise shall be issued  
10 except upon written application or proposal therefor to the  
11 commissioner, accompanied by a fee set by the commissioner.

12 (b) An application for issuance of a cable franchise shall  
13 be made in a form prescribed by the commissioner. The  
14 application shall set forth the facts as required by the  
15 commissioner to determine in accordance with section -65  
16 whether a cable franchise should be issued, including facts as  
17 to:

- 18 (1) The citizenship and character of the applicant;  
19 (2) The financial, technical, and other qualifications of  
20 the applicant;  
21 (3) The principals and ultimate beneficial owners of the  
22 applicant;



- 1 (4) The public interest to be served by the requested  
2 issuance of a cable franchise; and
- 3 (5) Any other matters deemed appropriate and necessary by  
4 the commissioner including the proposed plans and  
5 schedule of expenditures for or in support of the use  
6 of public, educational, and governmental access  
7 facilities, and the competitive availability and  
8 affordability of broadband and other advanced services  
9 to consumers.

10 (c) A proposal for issuance of a cable franchise shall be  
11 accepted for filing in accordance with section -64 only when  
12 made in response to the written request of the commissioner for  
13 the submission of proposals.

14 **§ -64 Cable franchise application or proposal procedure;**  
15 **public hearing; notice.** An application or proposal for a cable  
16 franchise shall be processed as follows:

- 17 (1) After the application or proposal and required fee are  
18 received by the commissioner and within a time frame  
19 established by rule, the commissioner shall notify the  
20 applicant in writing of the acceptance or  
21 non-acceptance for filing of the application or



1 proposal for issuance of a cable franchise required by  
2 this part;

3 (2) After the issuance of a notice of acceptance for  
4 filing and within a time frame established by rule,  
5 the commissioner shall hold a public hearing on the  
6 application or proposal to afford interested persons  
7 the opportunity to submit data, views, or arguments,  
8 orally or in writing. Notice thereof shall be given  
9 to the governing council and mayor of the county and  
10 to any telephone or other utility and cable company in  
11 the county in which the proposed service area is  
12 located. The commissioner shall also give public  
13 notice of the application and hearing at least once in  
14 each of two successive weeks in the county in which  
15 the proposed service area is located. The last notice  
16 shall be given at least fifteen days prior to the date  
17 of the hearing;

18 (3) After holding a public hearing, the commissioner shall  
19 approve the application or proposal in whole or in  
20 part, with or without conditions or modifications, or  
21 shall deny the application or proposal, with reasons  
22 for denial sent in writing to the applicant. If the



1 commissioner does not take final action after the  
2 issuance of a notice of acceptance for filing and  
3 within a time frame established by rule, the  
4 application or proposal shall be deemed denied; and  
5 (4) The time limit for final action may be extended, on  
6 the commissioner's approval of the applicant's request  
7 and justification in writing for an extension of time  
8 to the commissioner at least two weeks in advance of  
9 the requested effective date of the extension, or by  
10 mutual agreement.

11 **§ -65 Issuance of cable franchise authority; criteria;**  
12 **content.** (a) The commissioner is empowered to issue a cable  
13 franchise to construct or operate facilities for a cable system  
14 upon the terms and conditions provided in this part.

15 (b) The commissioner, after a public hearing as provided  
16 in this part, shall issue a cable franchise to the applicant  
17 when the commissioner is convinced that it is in the public  
18 interest to do so. In determining whether a cable franchise  
19 shall be issued, the commissioner shall take into consideration,  
20 among other things, the content of the application or proposal,  
21 the public need for the proposed service, the ability of the  
22 applicant to offer safe, adequate, and reliable service at a



1 reasonable cost to the subscribers, the suitability of the  
2 applicant, the financial responsibility of the applicant, the  
3 technical and operational ability of the applicant to perform  
4 efficiently the service for which authority is requested, any  
5 objections arising from the public hearing, the communications  
6 advisory committee established by this chapter, or elsewhere,  
7 and any other matters as the commissioner deems appropriate in  
8 the circumstances.

9 (c) In determining the area that is to be serviced by the  
10 applicant, the commissioner shall take into account the  
11 geography and topography of the proposed service area, and the  
12 present, planned, and potential expansion in facilities or cable  
13 services of the applicant's proposed cable system and existing  
14 cable systems.

15 (d) In issuing a cable franchise under this part, the  
16 commissioner is not restricted to approving or disapproving the  
17 application or proposal but may issue it for only partial  
18 exercise of the privilege sought or may attach to the exercise  
19 of the right granted by the cable franchise terms, limitations,  
20 and conditions which the commissioner deems the public interest  
21 may require. The cable franchise shall be nonexclusive, shall  
22 include a description of the service area in which the cable



1 system is to be constructed, extended, or operated and the  
2 approximate date on which the service is to commence and shall  
3 authorize the cable operator to provide service for a term of  
4 fifteen years or any other term that the commissioner determines  
5 to be appropriate.

6       **§ -66 Requirement for adequate service; terms and**  
7 **conditions of service.** (a) Every cable operator shall provide  
8 safe, adequate, and reliable service in accordance with  
9 applicable laws, rules, franchise requirements, and its filed  
10 schedule of terms and conditions of service.

11       (b) The commissioner shall require each cable operator to  
12 submit a schedule of all terms and conditions of service in the  
13 form and with the notice that the commissioner may prescribe.

14       (c) The commissioner shall ensure that the terms and  
15 conditions upon which cable service is provided are fair both to  
16 the public and to the cable operator, taking into account the  
17 geographic, topographic, and economic characteristics of the  
18 service area and the economics of providing cable service to  
19 subscribers in the service area.

20       **§ -67 Cable system installation, construction,**  
21 **operation, removal; general provisions.** (a) A cable franchise  
22 shall be construed to authorize the construction or operation of



1 a cable system within the service area above, below, on, in, or  
2 along any highway or other public place and through easements  
3 that have been dedicated for compatible purposes.

4 (b) The technical specifications, general routes of the  
5 distribution system, and the schedule for construction of the  
6 cable system shall be subject to the commissioner's approval.

7 (c) In installing, operating, and maintaining facilities,  
8 the cable operator shall avoid all unnecessary damage and injury  
9 to any trees, structures, and improvements in and along the  
10 routes authorized by the commissioner.

11 (d) The cable operator shall indemnify and hold the State  
12 and the county harmless at all times from any and all claims for  
13 injury and damage to persons or property, both real and  
14 personal, caused by the installation, operation, or maintenance  
15 of its cable system, notwithstanding any negligence on the part  
16 of the State or county, or their employees or agents. Upon  
17 receipt of notice in writing from the State or county, the cable  
18 operator shall, at its own expense, defend any action or  
19 proceeding against the State or county in which it is claimed  
20 that personal injury or property damage was caused by activities  
21 of the cable operator in the installation, operation, or  
22 maintenance of its cable system.



1 (e) The cable operator shall install and provide basic  
2 cable television service at no cost to any school or institution  
3 of higher education within its service area as determined by the  
4 commissioner; provided that service is actually being delivered  
5 within a reasonable distance from the school or institution of  
6 higher education which may request service.

7 (f) The cable operator shall designate five or more  
8 channels for public, educational, or governmental use, and this  
9 designation shall be re-evaluated every other year based on  
10 input solicited from the public, PEG access organizations, and  
11 cable franchise holders on how best to configure public,  
12 educational, or governmental capacity to maximize the  
13 achievement of the objectives of public, educational, and  
14 government access.

15 The Hawaii broadband commissioner shall have the authority  
16 to designate the PEG access organization consistent with  
17 administrative rules that shall be adopted by the commissioner.  
18 These administrative rules shall be adopted with input from the  
19 public and with recognition of the first amendment rights of  
20 individuals who utilize PEG access services. Board of director  
21 positions on PEG access organizations shall be managed by each



1 designated PEG access organization, including the selection of  
2 directors, length of terms, and number of directors.

3 PEG access organization assets include equipment,  
4 facilities, cash, financial assets and instruments, land, and  
5 buildings. These assets will be available to the PEG access  
6 organization designated by the commissioner to provide PEG  
7 services in a particular service area. If the contract between  
8 the commissioner and a PEG access organization is terminated or  
9 cancelled, these PEG assets will be held in trust for the  
10 benefit of PEG services until a new PEG access organization is  
11 designated by the Hawaii broadband commissioner.

12 (g) Upon termination of the period of the cable franchise  
13 or permit or of any renewal thereof, by passage of time or  
14 otherwise, the cable operator shall remove its facilities from  
15 the highways and other public places in, on, over, under, or  
16 along which they are installed if so ordered by the commissioner  
17 and shall restore the areas to their original or other  
18 acceptable condition, or otherwise dispose of same. If removal  
19 is not completed within six months of the termination, any  
20 property not removed shall be deemed to have been abandoned and  
21 the cable operator shall be liable for the cost of its removal.



1 (h) The use of public highways within the meaning of  
2 section 264-1 and other public places shall be subject to:

3 (1) All applicable state statutes and all applicable rules  
4 and orders of the public utilities commission and the  
5 commissioner governing the construction, maintenance,  
6 and removal of overhead and underground facilities of  
7 public utilities;

8 (2) For county highways, all applicable public welfare  
9 rules adopted by the governing body of the county in  
10 which the county highways are situated;

11 (3) For state or federal-aid highways, all public welfare  
12 rules adopted by the director of transportation; and

13 (4) For the relocation of cable facilities, the provisions  
14 of section 264-33 concerning the allocation of  
15 expenses for the relocation of utility facilities.

16 (i) In the use of easements dedicated to compatible  
17 purposes, the cable operator shall ensure:

18 (1) That the safety, functioning, and appearance of the  
19 property and the convenience and safety of other  
20 persons are not adversely affected by the installation  
21 or construction of facilities necessary for a cable  
22 system;



1           (2) That the cost of the installation, construction,  
2           operation, or removal of facilities is borne by the  
3           cable operator or subscribers, or a combination of  
4           both; and

5           (3) That the owner of the property is justly compensated  
6           by the cable operator for any damages caused by the  
7           installation, construction, operation, or removal of  
8           facilities by the cable operator.

9           (j) The expenditure of cable franchise fee revenues by a  
10          PEG access organization shall not be subject to the requirements  
11          set forth in chapter 103D. Any revenues derived from cable  
12          franchise fees shall not be considered appropriations or public  
13          funds of the State or be expended by the State in any manner.

14          §   -68   **Complaints; violations; revocation, alteration, or**  
15          **suspension of cable franchise.** (a) Subscriber complaints  
16          regarding the operation of a cable system may be made orally or  
17          in writing to the commissioner. The commissioner shall resolve  
18          complaints informally when possible.

19          (b) Any cable franchise issued hereunder after hearing in  
20          accordance with chapter 91 may be revoked, altered, or suspended  
21          by the commissioner as the commissioner deems necessary on any  
22          of the following grounds:



- 1 (1) For making material false or misleading statements in,  
2 or for material omissions from, any application or  
3 proposal or other filing made with the commissioner;
- 4 (2) For failure to maintain signal quality under the  
5 standards prescribed by the commissioner;
- 6 (3) For any sale, lease, assignment, or other transfer of  
7 its cable franchise without consent of the  
8 commissioner;
- 9 (4) Except when commercially impracticable, for  
10 unreasonable delay in construction or operation or for  
11 unreasonable withholding of the extension of cable  
12 service to any person in a service area;
- 13 (5) For violation of the terms of its cable franchise;
- 14 (6) For failure to comply with this chapter or any rules  
15 or orders prescribed by the commissioner;
- 16 (7) For violation of its filed schedule of terms and  
17 conditions of service; and
- 18 (8) For engaging in any unfair or deceptive act or  
19 practice as prohibited by section 480-2.

20 § -69 **Renewal of cable franchise.** Any cable franchise  
21 issued pursuant to this part may be renewed by the commissioner  
22 upon approval of a cable operator's application or proposal



1 therefor. The form of the application or proposal shall be  
2 prescribed by the commissioner. The periods of renewal shall be  
3 not less than five nor more than fifteen years each. The  
4 commissioner shall require of the applicant full disclosure,  
5 including the proposed plans and schedule of expenditures for or  
6 in support of the use of public, educational, or governmental  
7 access facilities and broadband facilities.

8       **§ -70 Transfer of cable franchise.** (a) No cable  
9 franchise, including the rights, privileges, and obligations  
10 thereof, may be assigned, sold, leased, encumbered, or otherwise  
11 transferred, voluntarily or involuntarily, directly or  
12 indirectly, including by transfer of control of any cable  
13 system, whether by change in ownership or otherwise, except upon  
14 written application to and approval by the commissioner. The  
15 form of the application shall be prescribed by the commissioner. !

16       (b) Sections -64 and -65 shall apply to the transfer  
17 of cable franchises.

18       **§ -71 Rate, filed with the commissioner; approval.** (a)  
19 The commissioner shall require each cable operator to file a  
20 schedule of its rates of service on a form and with the notice  
21 that the commissioner may prescribe.



1 (b) To the extent permitted by federal law, the  
2 commissioner shall regulate rates to ensure that they are fair  
3 both to the public and to the cable operator.

4 § -72 **Reports.** Each cable operator shall file with the  
5 commissioner reports of its financial, technical, and  
6 operational condition and its ownership. The reports shall be  
7 made in a form and on the time schedule prescribed by the  
8 commissioner and shall be kept on file open to the public.

9 § -73 **Annual fees.** (a) Each cable operator shall pay  
10 an annual fee to be determined by the commissioner. The fees so  
11 collected under this section shall be deposited into the Hawaii  
12 broadband commissioner special fund established under section  
13 -20.

14 (b) The commissioner shall adjust the fees assessed under  
15 this section, as necessary from time to time, pursuant to rules  
16 adopted in accordance with chapter 91.

17 § -74 **Criminal and civil liability.** Nothing in this  
18 chapter shall be deemed to affect the criminal and civil  
19 liability of cable programmers, cable operators, or public,  
20 educational, or governmental access organizations pursuant to  
21 the federal, state, or local laws regarding libel, slander,  
22 obscenity, incitement, invasions of privacy, false or misleading



1 advertising, or other similar laws, except that no public,  
2 educational, or governmental access organization shall incur any  
3 liability arising from, based on, or related to any program not  
4 created by the public, educational, or governmental access  
5 organization, which is broadcast on any channel obtained under  
6 section -67, or under similar arrangements.

7       § -75 Use of American Recovery and Reinvestment Act of  
8 2009, federal funds from fiscal year 2009 and fiscal year 2010  
9 appropriation measures, and other federal moneys. (a) The  
10 commissioner may apply for, and expend, federal moneys from the  
11 American Recovery and Reinvestment Act of 2009, federal funds  
12 from fiscal year 2009 and fiscal year 2010 appropriation  
13 measures, and other applicable federal acts.

14       (b) The commissioner may purchase broadband facilities,  
15 services, or equipment and may enter into contracts for  
16 broadband-related projects, through the compliance resolution  
17 fund, using moneys from the American Recovery and Reinvestment  
18 Act of 2009, federal funds from fiscal year 2009 and fiscal year  
19 2010 appropriation measures, and other applicable federal acts.

20       (c) The commissioner may establish a separate account  
21 within the Hawaii broadband commissioner special fund and assign  
22 to that account federal moneys appropriated under federal laws



1 that authorize principal forgiveness, zero and negative interest  
2 loans, and grants, including without limitation the American  
3 Recovery and Reinvestment Act of 2009, federal funds from fiscal  
4 year 2009 and fiscal year 2010 appropriation measures, and other  
5 applicable federal acts. The commissioner may use those moneys  
6 and, in so doing, may include additional requirements and  
7 subsidization not applicable to the remainder of the Hawaii  
8 broadband commissioner special fund, including forgiveness of  
9 principal and zero and negative interest loans.

10 (d) Any moneys applied for or received by the department  
11 under the American Recovery and Reinvestment Act of 2009 or  
12 federal funds from fiscal year 2009 and fiscal year 2010  
13 appropriation measures for uses related to the purpose of this  
14 chapter shall be transferred to the Hawaii broadband  
15 commissioner upon its establishment.

16 (e) The commissioner shall certify that a project is  
17 entitled to priority over other eligible projects on the basis  
18 of the overall public benefit associated with the project and  
19 financial needs, as well as a preference to those projects that  
20 can be started and completed expeditiously as stipulated under  
21 the American Recovery and Reinvestment Act of 2009.



1 (f) Contracts or purchases hereunder using moneys from the  
2 American Recovery and Reinvestment Act of 2009 or federal funds  
3 from fiscal year 2009 and fiscal year 2010 appropriation  
4 measures shall be exempt from chapter 103D.

5 (g) For the purposes of this section:

6 "American Recovery and Reinvestment Act of 2009" means  
7 the federal law, P.L. 111-5, making appropriations for various  
8 purposes, including job preservation and creation,  
9 infrastructure investment, energy efficiency and science,  
10 assistance to the unemployed, and state and local fiscal  
11 stabilization purposes.

12 § -76 **Broadband inventory maps.** The commissioner shall  
13 be designated as the entity within the State responsible for  
14 developing and maintaining broadband inventory maps, as  
15 described in the American Recovery and Reinvestment Act of 2009  
16 and the Broadband Data Improvement Act of 2008. Subject only to  
17 any limitations imposed by federal law, all providers of  
18 broadband infrastructure and services in Hawaii shall be  
19 required to furnish information requested by the commissioner in  
20 support of broadband mapping, reporting, and data-driven policy  
21 support. Proprietary data on private infrastructure furnished  
22 by private providers shall be protected from disclosure under



1 the Freedom of Information Act or Uniform Information Practices  
2 Act and shall be made available to the public only in a  
3 summarized form that appropriately protects the proprietary  
4 concerns of those private providers.

5 The commissioner shall have the authority to designate  
6 economic zones anywhere in the State at a location that may be  
7 identified as a strategic site to create facilities that will  
8 stimulate job growth."

9 SECTION 4. Section 26-9, Hawaii Revised Statutes, is  
10 amended by amending subsection (o) to read as follows:

11 "(o) Every person licensed under any chapter within the  
12 jurisdiction of the department of commerce and consumer affairs  
13 and every person licensed subject to chapter 485A or registered  
14 under chapter 467B shall pay upon issuance of a license, permit,  
15 certificate, or registration a fee and a subsequent annual fee  
16 to be determined by the director and adjusted from time to time  
17 to ensure that the proceeds, together with all other fines,  
18 income, and penalties collected under this section, do not  
19 surpass the annual operating costs of conducting compliance  
20 resolution activities required under this section. The fees may  
21 be collected biennially or pursuant to rules adopted under  
22 chapter 91, and shall be deposited into the special fund



1 established under this subsection. Every filing pursuant to  
2 chapter 514E or section 485A-202(a)(26) shall be assessed, upon  
3 initial filing and at each renewal period in which a renewal is  
4 required, a fee that shall be prescribed by rules adopted under  
5 chapter 91, and that shall be deposited into the special fund  
6 established under this subsection. Any unpaid fee shall be paid  
7 by the licensed person, upon application for renewal,  
8 restoration, reactivation, or reinstatement of a license, and by  
9 the person responsible for the renewal, restoration,  
10 reactivation, or reinstatement of a license, upon the  
11 application for renewal, restoration, reactivation, or  
12 reinstatement of the license. If the fees are not paid, the  
13 director may deny renewal, restoration, reactivation, or  
14 reinstatement of the license. The director may establish,  
15 increase, decrease, or repeal the fees when necessary pursuant  
16 to rules adopted under chapter 91. The director may also  
17 increase or decrease the fees pursuant to section 92-28.

18       There is created in the state treasury a special fund to be  
19 known as the compliance resolution fund to be expended by the  
20 director's designated representatives as provided by this  
21 subsection. Notwithstanding any law to the contrary, all  
22 revenues, fees, and fines collected by the department shall be



1 deposited into the compliance resolution fund. Unencumbered  
2 balances existing on June 30, 1999, in the cable television fund  
3 under chapter 440G, the division of consumer advocacy fund under  
4 chapter 269, the financial institution examiners' revolving  
5 fund, section 412:2-109, the special handling fund, section  
6 414-13, and unencumbered balances existing on June 30, 2002, in  
7 the insurance regulation fund, section 431:2-215, shall be  
8 deposited into the compliance resolution fund. This provision  
9 shall not apply to any fee imposed by the Hawaii broadband  
10 commissioner pursuant to chapter \_\_\_\_\_, including the regulatory  
11 fee in section \_\_\_\_\_-51, the drivers education fund underwriters  
12 fee, section 431:10C-115, insurance premium taxes and revenues,  
13 revenues of the workers' compensation special compensation fund,  
14 section 386-151, the captive insurance administrative fund,  
15 section 431:19-101.8, the insurance commissioner's education and  
16 training fund, section 431:2-214, the medical malpractice  
17 patients' compensation fund as administered under section 5 of  
18 Act 232, Session Laws of Hawaii 1984, and fees collected for  
19 deposit in the office of consumer protection restitution fund,  
20 section 487-14, the real estate appraisers fund, section 466K-1,  
21 the real estate recovery fund, section 467-16, the real estate  
22 education fund, section 467-19, the contractors recovery fund,



1 section 444-26, the contractors education fund, section 444-29,  
2 the condominium management education fund, section 514A-131, and  
3 the condominium education trust fund, section 514B-71. Any law  
4 to the contrary notwithstanding, the director may use the moneys  
5 in the fund to employ, without regard to chapter 76, hearings  
6 officers and attorneys. All other employees may be employed in  
7 accordance with chapter 76. Any law to the contrary  
8 notwithstanding, the moneys in the fund shall be used to fund  
9 the operations of the department. The moneys in the fund may be  
10 used to train personnel as the director deems necessary and for  
11 any other activity related to compliance resolution.

12 As used in this subsection, unless otherwise required by  
13 the context, "compliance resolution" means a determination of  
14 whether:

- 15 (1) Any licensee or applicant under any chapter subject to  
16 the jurisdiction of the department of commerce and  
17 consumer affairs has complied with that chapter;
- 18 (2) Any person subject to chapter 485A has complied with  
19 that chapter;
- 20 (3) Any person submitting any filing required by chapter  
21 514E or section 485A-202(a)(26) has complied with  
22 chapter 514E or section 485A-202(a)(26);



1 (4) Any person has complied with the prohibitions against  
2 unfair and deceptive acts or practices in trade or  
3 commerce; or

4 (5) Any person subject to chapter 467B has complied with  
5 that chapter;

6 and includes work involved in or supporting the above functions,  
7 licensing, or registration of individuals or companies regulated  
8 by the department, consumer protection, and other activities of  
9 the department.

10 The director shall prepare and submit an annual report to  
11 the governor and the legislature on the use of the compliance  
12 resolution fund. The report shall describe expenditures made  
13 from the fund including non-payroll operating expenses."

14 SECTION 5. Section 28-8.3, Hawaii Revised Statutes, is  
15 amended as follows:

16 1. By amending subsection (a) to read:

17 "(a) No department of the State other than the attorney  
18 general may employ or retain any attorney, by contract or  
19 otherwise, for the purpose of representing the State or the  
20 department in any litigation, rendering legal counsel to the  
21 department, or drafting legal documents for the department;



1 provided that the foregoing provision shall not apply to the  
2 employment or retention of attorneys:

3 (1) By the public utilities commission, the labor and  
4 industrial relations appeals board, and the Hawaii  
5 labor relations board;

6 (2) By any court or judicial or legislative office of the  
7 State; provided that if the attorney general is  
8 requested to provide representation to a court or  
9 judicial office by the chief justice or the chief  
10 justice's designee, or to a legislative office by the  
11 speaker of the house of representatives and the  
12 president of the senate jointly, and the attorney  
13 general declines to provide such representation on the  
14 grounds of conflict of interest, the attorney general  
15 shall retain an attorney for the court, judicial, or  
16 legislative office, subject to approval by the court,  
17 judicial, or legislative office;

18 (3) By the legislative reference bureau;

19 (4) By any compilation commission that may be constituted  
20 from time to time;

21 (5) By the real estate commission for any action involving  
22 the real estate recovery fund;



- 1 (6) By the contractors license board for any action
- 2 involving the contractors recovery fund;
- 3 (7) By the trustees for any action involving the travel
- 4 agency recovery fund;
- 5 (8) By the office of Hawaiian affairs;
- 6 (9) By the department of commerce and consumer affairs for
- 7 the enforcement of violations of chapters 480 and
- 8 485A;
- 9 (10) As grand jury counsel;
- 10 (11) By the Hawaiian home lands trust individual claims
- 11 review panel;
- 12 (12) By the Hawaii health systems corporation, or its
- 13 regional system boards, or any of their facilities;
- 14 (13) By the auditor;
- 15 (14) By the office of ombudsman;
- 16 (15) By the insurance division;
- 17 (16) By the University of Hawaii;
- 18 (17) By the Kahoolawe island reserve commission;
- 19 (18) By the division of consumer advocacy;
- 20 (19) By the office of elections;
- 21 (20) By the campaign spending commission;



1 (21) By the Hawaii tourism authority, as provided in  
2 section 201B-2.5; [~~or~~]  
3 (22) By the Hawaii broadband commissioner; or  
4 [~~(22)~~] (23) By a department, in the event the attorney  
5 general, for reasons deemed by the attorney general  
6 good and sufficient, declines to employ or retain an  
7 attorney for a department; provided that the governor  
8 thereupon waives the provision of this section."

9 2. By amending subsection (c) to read:

10 "(c) Every attorney employed by any department on a  
11 full-time basis, except an attorney employed by the public  
12 utilities commission, the Hawaii broadband commissioner, the  
13 labor and industrial relations appeals board, the Hawaii labor  
14 relations board, the office of Hawaiian affairs, the Hawaii  
15 health systems corporation or its regional system boards, the  
16 department of commerce and consumer affairs in prosecution of  
17 consumer complaints, insurance division, the division of  
18 consumer advocacy, the University of Hawaii, the Hawaii tourism  
19 authority as provided in section 201B-2.5, the Hawaiian home  
20 lands trust individual claims review panel, or as grand jury  
21 counsel, shall be a deputy attorney general."



1 SECTION 6. Section 46-15, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The mayor of each county, after holding a public  
4 hearing on the matter and receiving the approval of the  
5 respective council, shall be empowered to designate areas of  
6 land for experimental and demonstration housing projects, the  
7 purposes of which are to research and develop ideas that would  
8 reduce the cost of housing in the State. Except as hereinafter  
9 provided, the experimental and demonstration housing projects  
10 shall be exempt from all statutes, ordinances, charter  
11 provisions, and rules or regulations of any governmental agency  
12 or public utility relating to planning, zoning, construction  
13 standards for subdivisions, development and improvement of land,  
14 and the construction and sale of homes thereon; provided that  
15 the experimental and demonstration housing projects shall not  
16 affect the safety standards or tariffs approved by the public  
17 utility commissions or the Hawaii broadband commissioner for  
18 such public utility.

19 The mayor of each county with the approval of the  
20 respective council may designate a county agency or official who  
21 shall have the power to review all plans and specifications for  
22 the subdivisions, development and improvement of the land



1 involved, and the construction and sale of homes thereon. The  
2 county agency or official shall have the power to approve or  
3 disapprove or to make modifications to all or any portion of the  
4 plans and specifications.

5 The county agency or official shall submit preliminary  
6 plans and specifications to the legislative body of the  
7 respective county for its approval or disapproval. The final  
8 plans and specifications for the project shall be deemed  
9 approved by the legislative body if the final plans and  
10 specifications do not substantially deviate from the approved  
11 preliminary plans and specifications. The final plans and  
12 specifications shall constitute the standards for the particular  
13 project.

14 No action shall be prosecuted or maintained against any  
15 county, its officials or employees, on account of actions taken  
16 in reviewing, approving, or disapproving such plans and  
17 specifications.

18 Any experimental or demonstration housing project for the  
19 purposes hereinabove mentioned may be sponsored by any state or  
20 county agency or any person as defined in section 1-19.

21 The county agency or official shall apply to the state land  
22 use commission for an appropriate land use district



1 classification change, except where a proposed project is  
2 located on land within an urban district established by the  
3 state land use commission. Notwithstanding any law, rule, or  
4 regulation to the contrary, the state land use commission may  
5 approve the application at any time after a public hearing held  
6 in the county where the land is located upon notice of the time  
7 and place of the hearing being published in the same manner as  
8 the notice required for a public hearing by the planning  
9 commission of the appropriate county."

10 SECTION 7. Section 91-13.5, Hawaii Revised Statutes, is  
11 amended by amending subsection (f) to read as follows:

12 "(f) This section shall not apply to:

13 (1) Any proceedings of the public utilities commission;

14 [~~or~~]

15 (2) Any county or county agency that is exempted by county  
16 ordinance from this section[~~-~~]; or

17 (3) Any proceedings of the Hawaii broadband commissioner."

18 SECTION 8. Section 92-21, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§92-21 Copies of records; other costs and fees.** Except  
21 as otherwise provided by law, a copy of any government record,  
22 including any map, plan, diagram, photograph, photostat, or



1 geographic information system digital data file, which is open  
2 to the inspection of the public, shall be furnished to any  
3 person applying for the same by the public officer having charge  
4 or control thereof upon the payment of the reasonable cost of  
5 reproducing [~~such~~] the copy. Except as provided in section  
6 91-2.5, the cost of reproducing any government record, except  
7 geographic information system digital data, shall not be less  
8 than 5 cents per page, sheet, or fraction thereof. The cost of  
9 reproducing geographic information system digital data shall be  
10 in accordance with rules adopted by the agency having charge or  
11 control of that data. [~~Such~~] The reproduction cost shall  
12 include but shall not be limited to labor cost for search and  
13 actual time for reproducing, material cost, including  
14 electricity cost, equipment cost, including rental cost, cost  
15 for certification, and other related costs. All fees shall be  
16 paid in by the public officer receiving or collecting the same  
17 to the state director of finance, the county director of  
18 finance, or to the agency or department by which the officer is  
19 employed, as government realizations; provided that fees  
20 collected by the public utilities commission pursuant to this  
21 section shall be deposited in the public utilities commission  
22 special fund established under section 269-33[-], and fees



1 collected by the Hawaii broadband commissioner shall be  
2 deposited in the Hawaii broadband commissioner special fund  
3 established under section -20."

4 SECTION 9. Section 101-43, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§101-43 Requirements prior to exercise of power. Any  
7 corporation having the power of eminent domain under section  
8 101-41 may continue to exercise the power[~~7~~]; provided that  
9 prior to the exercise of the power:

10 (1) The corporation submits to the public utilities  
11 commission or, in the case of telecommunications  
12 carriers or telecommunications common carriers, to the  
13 Hawaii broadband commissioner, its intention to  
14 exercise the power, with a description of the property  
15 to be condemned; and

16 (2) The public utilities commission or the Hawaii  
17 broadband commissioner, as the case may be, finds that  
18 the proposed condemnation is in the public interest,  
19 that the proposed condemnation is necessary, and that  
20 the corporation will use the property for its  
21 operations as a public utility."



1 SECTION 10. Section 163D-6, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) If the corporation acquires the assets of a private  
4 or other corporation, then, notwithstanding any law to the  
5 contrary:

6 (1) Neither the corporation nor any subsidiary corporation  
7 vested with the assets shall be subject to chapter 91  
8 with respect to the assets;

9 (2) Employees retained to operate the assets shall not be  
10 subject to chapter 76;

11 (3) Assets constituting real property interest shall not  
12 be subject to chapter 171;

13 (4) No investment, loan, or use of funds by the  
14 corporation or a subsidiary corporation vested with  
15 the assets shall be subject to chapter 42F or 103; and

16 (5) Neither the corporation nor a subsidiary corporation  
17 vested with the assets shall constitute a public  
18 utility or be subject to the jurisdiction of the  
19 public utilities commission under chapter 269[-] or  
20 the Hawaii broadband commissioner under chapter ."

21 SECTION 11. Section 166-4, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           "§166-4 Park development. Except as herein provided, the  
2 department may develop, on behalf of the State or in partnership  
3 with a federal agency, a county, or a private party,  
4 agricultural parks which, at the option of the board, shall be  
5 exempt from all statutes, ordinances, charter provisions, and  
6 rules of any governmental agency relating to planning, zoning,  
7 construction standards for subdivisions, development and  
8 improvement of land, and the construction of buildings thereon;  
9 provided that:

10           (1) The board finds the agricultural park is consistent  
11 with the purpose and intent of this chapter, and meets  
12 minimum requirements of health and safety;

13           (2) The development of the proposed agricultural park does  
14 not contravene any safety standards or tariffs  
15 approved for public utilities by the public utilities  
16 commission [~~for public utilities,~~] or the Hawaii  
17 broadband commissioner;

18           (3) The legislative body of the county in which the  
19 agricultural park is to be situated shall have  
20 approved the agricultural park.

21           (A) The legislative body shall approve or disapprove  
22 the agricultural park within forty-five days



1 after the department has submitted the  
2 preliminary plans and specifications for the  
3 agricultural park to the legislative body. If  
4 after the forty-fifth day an agricultural park is  
5 not disapproved, it shall be deemed approved by  
6 the legislative body.

7 (B) No action shall be prosecuted or maintained  
8 against any county, its officials, or employees,  
9 on account of actions taken by them in reviewing,  
10 approving, or disapproving the plans and  
11 specifications.

12 (C) The final plans and specifications for the  
13 agricultural park shall be deemed approved by the  
14 legislative body if the final plans and  
15 specifications do not substantially deviate from  
16 the preliminary plans and specifications. The  
17 final plans and specifications for the project  
18 shall constitute the planning, zoning, building,  
19 construction, and subdivision standards for that  
20 agricultural park. For purposes of sections  
21 501-85 and 502-17, the chairperson of the board  
22 of agriculture or the responsible county official



1           may certify maps and plans of lands connected  
2           with the agricultural park as having complied  
3           with applicable laws and ordinances relating to  
4           consolidation and subdivision of lands, and such  
5           maps and plans shall be accepted for registration  
6           or recordation by the land court and registrar;  
7           and

8           (4) The State shall assume the responsibility of  
9           maintaining all roads within the agricultural park if  
10          the roads are developed exempt from applicable county  
11          ordinances, charter provisions, and rules regarding  
12          roads."

13          SECTION 12. Section 166E-10, Hawaii Revised Statutes, is  
14          amended to read as follows:

15          "~~§~~166E-10 **Non-agricultural park land development.**  
16          On behalf of the State or in partnership with a federal agency,  
17          a county, or a private party and except as provided in this  
18          section, the department may develop non-agricultural park lands  
19          that, at the option of the board, may be exempt from all  
20          statutes, ordinances, charter provisions, and rules of any  
21          governmental agency relating to planning, zoning, construction



1 standards for subdivisions, development and improvement of land,  
2 and construction of buildings thereon; provided that:

3 (1) The board finds the development is consistent with the  
4 public purpose and intent of this chapter and meets  
5 minimum health and safety requirements;

6 (2) The development of the proposed non-agricultural park  
7 land does not contravene any safety standards or  
8 tariffs approved for public utilities by the public  
9 utilities commission [~~for public utilities,~~] or the  
10 Hawaii broadband commissioner;

11 (3) The county in which the non-agricultural park  
12 development is proposed shall approve the  
13 non-agricultural park development; and provided  
14 further that:

15 (A) The county shall approve or disapprove the  
16 development within forty-five days after the  
17 department submits preliminary plans and  
18 specifications for the development to the county.  
19 If the county does not disapprove the development  
20 after the forty-fifth day, the development shall  
21 be deemed approved;



1 (B) No action shall be prosecuted or maintained  
2 against any county, its officials, or employees,  
3 on any actions taken by them in reviewing,  
4 approving, or disapproving the plans and  
5 specifications; and

6 (C) The final plans and specifications for the  
7 development shall be deemed approved by the  
8 county if the final plans and specifications do  
9 not substantially deviate from the preliminary  
10 plans and specifications. The final plans and  
11 specifications for the project shall constitute  
12 the planning, zoning, building, construction, and  
13 subdivision standards for that development. For  
14 purposes of sections 501-85 and 502-17, the  
15 chairperson of the board or the responsible  
16 county official may certify maps and plans of  
17 lands connected with the development as having  
18 complied with applicable laws and ordinances  
19 relating to consolidation and subdivision of  
20 lands, and the maps and plans shall be accepted  
21 for registration or recordation by the land court  
22 and registrar; and



1           (4) The State shall assume the responsibility of  
2           maintaining all roads and infrastructure improvements  
3           within the boundaries if the improvements are  
4           developed exempt from applicable county ordinances,  
5           charter provisions, and rules regarding development."

6           SECTION 13. Section 171-134, Hawaii Revised Statutes, is  
7           amended by amending subsection (b) to read as follows:

8           "(b) At the option of the board, the development of an  
9           industrial park shall be exempt from all statutes, ordinances,  
10          charter provisions, and rules of any governmental agency  
11          relating to planning, zoning, construction standards for  
12          subdivision development and improvement of land, and the  
13          construction of buildings thereon; provided that:

14          (1) The board finds that the industrial park meets the  
15          minimum requirements of health and safety;

16          (2) The development of the industrial park does not  
17          contravene any safety standards or tariffs approved  
18          for public utilities by the public utilities  
19          commission [~~for public utilities,~~] or the Hawaii  
20          broadband commissioner;

21          (3) The legislative body of the county in which the  
22          industrial park is proposed to be situated approves



1 the industrial park[-] in accordance with the  
2 following:

3 (A) The legislative body shall approve or disapprove  
4 the industrial park within forty-five days after  
5 the department has submitted preliminary plans  
6 and specifications for the industrial park to the  
7 legislative body. If after the forty-fifth day,  
8 an industrial park is not disapproved, it shall  
9 be deemed approved by the legislative body[-];

10 (B) No action shall be prosecuted or maintained  
11 against any county, its officials, or employees,  
12 on account of actions taken by them in reviewing,  
13 approving, or disapproving the plans and  
14 specifications[-]; and

15 (C) The final plans and specifications for the  
16 industrial park shall be deemed approved by the  
17 legislative body if the final plans and  
18 specifications for the industrial park do not  
19 substantially deviate from the preliminary plans  
20 and specifications. The determination that the  
21 final plans and specifications do not  
22 substantially deviate from the preliminary plans



1           and specifications of the industrial park shall  
2           rest with the board. The final plans and  
3           specifications for the park shall constitute the  
4           planning, zoning, building, improvement,  
5           construction, and subdivision standards for that  
6           industrial park. For the purposes of sections  
7           501-85 and 502-17, the chairperson of the board  
8           or the responsible county official may certify  
9           maps and plans of land connected with the  
10          industrial park as having complied with  
11          applicable laws and ordinances relating to  
12          consolidation and subdivision of lands, and such  
13          maps and plans shall be accepted for registration  
14          or recordation by the land court and registrar;  
15          and

16          (4) The board shall assume the responsibility of all  
17          infrastructure within the industrial park, if the  
18          infrastructure developed is exempt from applicable  
19          county ordinances, charter provisions, and rules."

20          SECTION 14. Section 196D-10, Hawaii Revised Statutes, is  
21          amended by amending subsection (c) to read as follows:



1           "(c) This section shall not apply to any permit issued by  
2 the public utilities commission under chapter 269[-] or the  
3 Hawaii broadband commissioner under chapter \_\_\_\_\_."

4           SECTION 15. Section 201H-13, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "~~+~~§201H-13~~+~~ **Eminent domain, exchange or use of public**  
7 **property.** The corporation may acquire any real property,  
8 including fixtures and improvements, or interest therein:  
9 through voluntary negotiation; through exchange of land in  
10 accordance with section 171-50~~[-]~~; provided that the public land  
11 to be exchanged need not be of like use to that of the private  
12 land; or by the exercise of the power of eminent domain which it  
13 deems necessary by the adoption of a resolution declaring that  
14 the acquisition of the property described therein is in the  
15 public interest and required for public use. The corporation  
16 shall exercise the power of eminent domain granted by this  
17 section in the same manner and procedure as is provided by  
18 chapter 101 and otherwise in accordance with all applicable  
19 provisions of the general laws of the State; provided that  
20 condemnation of parcels greater than fifteen acres shall be  
21 subject to legislative disapproval expressed in a concurrent  
22 resolution adopted by majority vote of the senate and the house



1 of representatives in the first regular or special session  
2 following the date of condemnation.

3 The corporation may acquire by the exercise of the power of  
4 eminent domain property already devoted to a public use;  
5 provided that no property belonging to any government may be  
6 acquired without its consent, and that no property belonging to  
7 a public utility corporation may be acquired without the  
8 approval of the public utilities commission[7] or, in the case  
9 of telecommunications carriers or telecommunications common  
10 carriers, the Hawaii broadband commissioner, and subject to  
11 legislative disapproval expressed in a concurrent resolution  
12 adopted by majority vote of the senate and the house of  
13 representatives in the first regular or special session  
14 following the date of condemnation."

15 SECTION 16. Section 201H-33, Hawaii Revised Statutes, is  
16 amended by amending subsection (c) to read as follows:

17 "(c) The corporation shall adopt, pursuant to chapter 91,  
18 rules on health, safety, building, planning, zoning, and land  
19 use that relate to the development, subdivision, and  
20 construction of dwelling units in housing projects in which the  
21 State, through the corporation, shall participate. The rules  
22 shall not contravene any safety standards or tariffs approved by



1 the public utilities commission[7] or the Hawaii broadband  
2 commissioner, and shall follow existing law as closely as is  
3 consistent with the production of lower cost housing with  
4 standards that meet minimum requirements of good design,  
5 pleasant amenities, health, safety, and coordinated development.

6 When adopted, the rules shall have the force and effect of  
7 law and shall supersede, for all housing projects in which the  
8 State, through the corporation, shall participate, all other  
9 inconsistent laws, ordinances, and rules relating to the use,  
10 zoning, planning, and development of land, and the construction  
11 of dwelling units thereon. The rules, before becoming  
12 effective, shall be presented to the legislative body of each  
13 county in which they will be effective and the legislative body  
14 of any county may within forty-five days approve or disapprove,  
15 for that county, any or all of the rules by a majority vote of  
16 its members. On the forty-sixth day after submission, any rules  
17 not disapproved shall be deemed to have been approved by the  
18 county."

19 SECTION 17. Section 201H-38, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21 "(a) The corporation may develop on behalf of the State or  
22 with an eligible developer, or may assist under a government



1 assistance program in the development of, housing projects that  
2 shall be exempt from all statutes, ordinances, charter  
3 provisions, and rules of any government agency relating to  
4 planning, zoning, construction standards for subdivisions,  
5 development and improvement of land, and the construction of  
6 dwelling units thereon; provided that:

- 7 (1) The corporation finds the housing project is  
8 consistent with the purpose and intent of this  
9 chapter, and meets minimum requirements of health and  
10 safety;
- 11 (2) The development of the proposed housing project does  
12 not contravene any safety standards, tariffs, or rates  
13 and fees approved for public utilities by the public  
14 utilities commission [~~for public utilities~~] or the  
15 Hawaii broadband commissioner or of the various boards  
16 of water supply authorized under chapter 54;
- 17 (3) The legislative body of the county in which the  
18 housing project is to be situated shall have approved  
19 the project with or without modifications:
- 20 (A) The legislative body shall approve, approve with  
21 modification, or disapprove the project by  
22 resolution within forty-five days after the



1 corporation has submitted the preliminary plans  
2 and specifications for the project to the  
3 legislative body. If on the forty-sixth day a  
4 project is not disapproved, it shall be deemed  
5 approved by the legislative body;

6 (B) No action shall be prosecuted or maintained  
7 against any county, its officials, or employees  
8 on account of actions taken by them in reviewing,  
9 approving, modifying, or disapproving the plans  
10 and specifications; and

11 (C) The final plans and specifications for the  
12 project shall be deemed approved by the  
13 legislative body if the final plans and  
14 specifications do not substantially deviate from  
15 the preliminary plans and specifications. The  
16 final plans and specifications for the project  
17 shall constitute the zoning, building,  
18 construction, and subdivision standards for that  
19 project. For purposes of sections 501-85 and  
20 502-17, the executive director of the corporation  
21 or the responsible county official may certify  
22 maps and plans of lands connected with the



1 project as having complied with applicable laws  
2 and ordinances relating to consolidation and  
3 subdivision of lands, and the maps and plans  
4 shall be accepted for registration or recordation  
5 by the land court and registrar; and

6 (4) The land use commission shall approve, approve with  
7 modification, or disapprove a boundary change within  
8 forty-five days after the corporation has submitted a  
9 petition to the commission as provided in section  
10 205-4. If, on the forty-sixth day, the petition is  
11 not disapproved, it shall be deemed approved by the  
12 commission."

13 SECTION 18. Section 205A-46, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) A variance may be granted for a structure or activity  
16 otherwise prohibited in this part if the authority finds in  
17 writing, based on the record presented, that the proposed  
18 structure or activity is necessary for or ancillary to:

- 19 (1) Cultivation of crops;
- 20 (2) Aquaculture;
- 21 (3) Landscaping; provided that the authority finds that
- 22 the proposed structure or activity will not adversely



- 1           affect beach processes and will not artificially fix  
2           the shoreline;
- 3           (4) Drainage;
- 4           (5) Boating, maritime, or watersports recreational  
5           facilities;
- 6           (6) Facilities or improvements by public agencies or  
7           public utilities regulated under chapter 269[+] or  
8           chapter \_\_\_\_\_;
- 9           (7) Private facilities or improvements that are clearly in  
10          the public interest;
- 11          (8) Private facilities or improvements which will neither  
12          adversely affect beach processes nor artificially fix  
13          the shoreline; provided that the authority also finds  
14          that hardship will result to the applicant if the  
15          facilities or improvements are not allowed within the  
16          shoreline area;
- 17          (9) Private facilities or improvements that may  
18          artificially fix the shoreline; provided that the  
19          authority also finds that shoreline erosion is likely  
20          to cause hardship to the applicant if the facilities  
21          or improvements are not allowed within the shoreline  
22          area, and the authority imposes conditions to prohibit



1           any structure seaward of the existing shoreline unless  
2           it is clearly in the public interest; or  
3       (10) Moving of sand from one location seaward of the  
4           shoreline to another location seaward of the  
5           shoreline; provided that the authority also finds that  
6           moving of sand will not adversely affect beach  
7           processes, will not diminish the size of a public  
8           beach, and will be necessary to stabilize an eroding  
9           shoreline."

10       SECTION 19. Section 239-6.5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12       " ~~[+]§239-6.5[+]~~ **Tax credit for lifeline telephone service**  
13 **subsidy.** A telephone public utility subject to this chapter  
14 that has been authorized to establish lifeline telephone service  
15 rates by the public utilities commission before July 1, 2009, or  
16 by the Hawaii broadband commissioner on or after July 1, 2009,  
17 shall be allowed a tax credit, equal to the lifeline telephone  
18 service costs incurred by the utility, to be applied against the  
19 utility's tax imposed by this chapter. The amount of this  
20 credit shall be determined and certified annually by the ~~[public~~  
21 ~~utilities commission.]~~ Hawaii broadband commissioner. The tax  
22 liability for a telephone public utility claiming the credit



1 shall be calculated in the manner prescribed in section 239-5;  
2 provided that the amount of tax due from the utility shall be  
3 net of the lifeline service credit."

4 SECTION 20. Section 264-20, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) Any other law to the contrary notwithstanding, any  
7 decision by the State, the department of transportation, a  
8 county, or any officers, employees, or agents of the State, the  
9 department of transportation, or a county to select or apply  
10 flexibility in highway design pursuant to this section and  
11 consistent with the practices used by the Federal Highway  
12 Administration and the American Association of State Highway and  
13 Transportation Officials shall not give rise to a cause of  
14 action or claim against:

- 15 (1) The State;
- 16 (2) The department of transportation;
- 17 (3) The counties;
- 18 (4) Any public utility regulated under chapter 269 or  
19 chapter that places its facilities within the  
20 highway right-of-way; or
- 21 (5) Any officer, employee, or agent of an entity listed in  
22 paragraphs (1) to (4)."



1 SECTION 21. Section 269-1, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By repealing the definitions of "carrier of last  
4 resort" and "designated local exchange service area":

5 [~~"Carrier of last resort" means a telecommunications~~  
6 ~~carrier designated by the commission to provide universal~~  
7 ~~service in a given local exchange service area determined to be~~  
8 ~~lacking in effective competition.~~

9 ~~"Designated local exchange service area" means an area as~~  
10 ~~determined by the commission to be best served by designating a~~  
11 ~~carrier of last resort pursuant to section 269-43."]~~

12 2. By amending the definition of "public utility" to read:  
13 ""Public utility":

14 (1) Includes every person who may own, control, operate,  
15 or manage as owner, lessee, trustee, receiver, or  
16 otherwise, whether under a franchise, charter,  
17 license, articles of association, or otherwise, any  
18 plant or equipment, or any part thereof, directly or  
19 indirectly for public use, for the transportation of  
20 passengers or freight, or the conveyance or  
21 transmission of telecommunications messages, or the  
22 furnishing of facilities for the transmission of



1 intelligence by electricity by land or water or air  
2 within the State, or between points within the State,  
3 or for the production, conveyance, transmission,  
4 delivery, or furnishing of light, power, heat, cold,  
5 water, gas, or oil, or for the storage or warehousing  
6 of goods, or the disposal of sewage; provided that the  
7 term shall include:

8 (A) Any person insofar as that person owns or  
9 operates a private sewer company or sewer  
10 facility; and

11 (B) Any telecommunications carrier or  
12 telecommunications common carrier;

13 (2) Shall not include:

14 (A) Any person insofar as that person owns or  
15 operates an aerial transportation enterprise;

16 (B) Persons owning or operating taxicabs, as defined  
17 in this section;

18 (C) Common carriers transporting only freight on the  
19 public highways, unless operating within  
20 localities or along routes or between points that  
21 the public utilities commission finds to be



- 1           inadequately serviced without regulation under  
2           this chapter;
- 3           (D) Persons engaged in the business of warehousing or  
4           storage unless the commission finds that  
5           regulation thereof is necessary in the public  
6           interest;
- 7           (E) The business of any carrier by water to the  
8           extent that the carrier enters into private  
9           contracts for towage, salvage, hauling, or  
10          carriage between points within the State and the  
11          carriage is not pursuant to either an established  
12          schedule or an undertaking to perform carriage  
13          services on behalf of the public generally;
- 14          (F) The business of any carrier by water,  
15          substantially engaged in interstate or foreign  
16          commerce, transporting passengers on luxury  
17          cruises between points within the State or on  
18          luxury round-trip cruises returning to the point  
19          of departure;
- 20          (G) Any person who:
- 21               (i) Controls, operates, or manages plants or  
22               facilities for the production, transmission,



- 1 or furnishing of power primarily or entirely  
2 from nonfossil fuel sources; and
- 3 (ii) Provides, sells, or transmits all of that  
4 power, except such power as is used in its  
5 own internal operations, directly to a  
6 public utility for transmission to the  
7 public;
- 8 (H) A telecommunications provider only to the extent  
9 determined by the [~~commission~~] Hawaii broadband  
10 commissioner pursuant to section [~~269-16.9,~~]  
11 -34;
- 12 (I) Any person who controls, operates, or manages  
13 plants or facilities developed pursuant to  
14 chapter 167 for conveying, distributing, and  
15 transmitting water for irrigation and such other  
16 purposes that shall be held for public use and  
17 purpose;
- 18 (J) Any person who owns, controls, operates, or  
19 manages plants or facilities for the reclamation  
20 of wastewater; provided that:
- 21 (i) The services of the facility shall be  
22 provided pursuant to a service contract



1 between the person and a state or county  
2 agency and at least ten per cent of the  
3 wastewater processed is used directly by the  
4 State or county which has entered into the  
5 service contract;

6 (ii) The primary function of the facility shall  
7 be the processing of secondary treated  
8 wastewater that has been produced by a  
9 municipal wastewater treatment facility that  
10 is owned by a state or county agency;

11 (iii) The facility shall not make sales of water  
12 to residential customers;

13 (iv) The facility may distribute and sell  
14 recycled water or reclaimed water to  
15 entities not covered by a state or county  
16 service contract; provided that, in the  
17 absence of regulatory oversight and direct  
18 competition, the distribution and sale of  
19 recycled or reclaimed water shall be  
20 voluntary and its pricing fair and  
21 reasonable. For purposes of this  
22 subparagraph, "recycled water" and



1 "reclaimed water" mean treated wastewater  
2 that by design is intended or used for a  
3 beneficial purpose; and

4 (v) The facility shall not be engaged, either  
5 directly or indirectly, in the processing of  
6 food wastes; and

7 (K) Any person who owns, controls, operates, or  
8 manages any seawater air conditioning district  
9 cooling project; provided that at least fifty per  
10 cent of the energy required for the seawater air  
11 conditioning district cooling system is provided  
12 by a renewable energy resource, such as cold,  
13 deep seawater.

14 If the application of this chapter is ordered by the  
15 commission or the Hawaii broadband commissioner, as the case may  
16 be, in any case provided in paragraphs (2) (C), (2) (D), (2) (H),  
17 and (2) (I), the business of any public utility that presents  
18 evidence of bona fide operation on the date of the commencement  
19 of the proceedings resulting in the order shall be presumed to  
20 be necessary to public convenience and necessity, but any  
21 certificate issued under this proviso shall nevertheless be  
22 subject to [~~such~~] terms and conditions as the commission or the

1 Hawaii broadband commissioner, respectively, may prescribe, as  
2 provided in sections [269-16.9]     -34 and 269-20."

3       3. By amending the definition of "telecommunications  
4 carrier" or "telecommunications common carrier" to read:

5       "Telecommunications carrier" or "telecommunications common  
6 carrier" [~~means any person that owns, operates, manages, or~~  
7 ~~controls any facility used to furnish telecommunications~~  
8 ~~services for profit to the public, or to classes of users as to~~  
9 ~~be effectively available to the public, engaged in the provision~~  
10 ~~of services, such as voice, data, image, graphics, and video~~  
11 ~~services, that make use of all or part of their transmission~~  
12 ~~facilities, switches, broadcast equipment, signaling, or~~  
13 ~~control devices.~~] has the same meaning as in section     -1."

14       4. By amending the definition of "telecommunications  
15 service" or "telecommunications" to read:

16       "Telecommunications service" or "telecommunications"  
17 [~~means the offering of transmission between or among points~~  
18 ~~specified by a user, of information of the user's choosing,~~  
19 ~~including voice, data, image, graphics, and video without change~~  
20 ~~in the form or content of the information, as sent and received,~~  
21 ~~by means of electromagnetic transmission, or other similarly~~  
22 ~~capable means of transmission, with or without benefit of any~~



1 ~~closed transmission medium, and does not include cable service~~  
2 ~~as defined in section 440G-3.]~~ has the same meaning as in  
3 section -1."

4 SECTION 22. Section 269-6, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) The public utilities commission shall have the  
7 general supervision hereinafter set forth over all public  
8 utilities, and shall perform the duties and exercise the powers  
9 imposed or conferred upon it by this chapter. Included among  
10 the general powers of the commission is the authority to adopt  
11 rules pursuant to chapter 91 necessary for the purposes of this  
12 chapter. Chapter 269 shall apply to telecommunications carriers  
13 or telecommunications common carriers until such time as the  
14 Hawaii broadband commissioner is sworn in and the Hawaii  
15 broadband commissioner issues an order accepting the  
16 commissioner's authority and undertaking to enforce  
17 chapter ."

18 SECTION 23. Section 269-16, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "**§269-16 Regulation of utility rates; ratemaking**  
21 **procedures.** (a) All rates, fares, charges, classifications,  
22 schedules, rules, and practices made, charged, or observed by



1 any public utility or by two or more public utilities jointly  
2 shall be just and reasonable and shall be filed with the public  
3 utilities commission. The rates, fares, classifications,  
4 charges, and rules of every public utility shall be published by  
5 the public utility in [~~such~~] the manner as the public utilities  
6 commission may require, and copies shall be furnished to any  
7 person on request.

8 To the extent the contested case proceedings referred to in  
9 chapter 91 are required in any rate proceeding to ensure  
10 fairness and to provide due process to parties that may be  
11 affected by rates approved by the commission, the evidentiary  
12 hearings shall be conducted expeditiously and shall be conducted  
13 as a part of the ratemaking proceeding.

14 (b) No rate, fare, charge, classification, schedule, rule,  
15 or practice, other than one established pursuant to an automatic  
16 rate adjustment clause previously approved by the commission,  
17 shall be established, abandoned, modified, or departed from by  
18 any public utility, except after thirty days' notice to the  
19 commission as prescribed in section 269-12(b), and prior  
20 approval by the commission for any increases in rates, fares, or  
21 charges. The commission, in its discretion and for good cause  
22 shown, may allow any rate, fare, charge, classification,



1 schedule, rule, or practice to be established, abandoned,  
2 modified, or departed from upon notice less than that provided  
3 for in section 269-12(b). A contested case hearing shall be  
4 held in connection with any increase in rates, and the hearing  
5 shall be preceded by a public hearing as prescribed in section  
6 269-12(c), at which the consumers or patrons of the public  
7 utility may present testimony to the commission concerning the  
8 increase. The commission, upon notice to the public utility,  
9 may:

- 10 (1) Suspend the operation of all or any part of the  
11 proposed rate, fare, charge, classification, schedule,  
12 rule, or practice or any proposed abandonment or  
13 modification thereof or departure therefrom;
- 14 (2) After a hearing, by order:
- 15 (A) Regulate, fix, and change all [~~such~~] rates,  
16 fares, charges, classifications, schedules,  
17 rules, and practices so that the same shall be  
18 just and reasonable;
- 19 (B) Prohibit rebates and unreasonable discrimination  
20 between localities or between users or consumers  
21 under substantially similar conditions;



- 1 (C) Regulate the manner in which the property of  
2 every public utility is operated with reference  
3 to the safety and accommodation of the public;
- 4 (D) Prescribe its form and method of keeping  
5 accounts, books, and records, and its accounting  
6 system;
- 7 (E) Regulate the return upon its public utility  
8 property;
- 9 (F) Regulate the incurring of indebtedness relating  
10 to its public utility business; and
- 11 (G) Regulate its financial transactions; and
- 12 (3) Do all things that are necessary and in the exercise  
13 of the commission's power and jurisdiction, all of  
14 which as so ordered, regulated, fixed, and changed are  
15 just and reasonable, and provide a fair return on the  
16 property of the utility actually used or useful for  
17 public utility purposes.
- 18 (c) The commission may in its discretion, after public  
19 hearing and upon showing by a public utility of probable  
20 entitlement and financial need, authorize temporary increases in  
21 rates, fares, and charges; provided that the commission shall  
22 require by order the public utility to return, in the form of an



1 adjustment to rates, fares, or charges to be billed in the  
2 future, any amounts with interest, at a rate equal to the rate  
3 of return on the public utility's rate base found to be  
4 reasonable by the commission, received by reason of continued  
5 operation that are in excess of the rates, fares, or charges  
6 finally determined to be just and reasonable by the commission.  
7 Interest on any excess shall commence as of the date that any  
8 rate, fare, or charge goes into effect that results in the  
9 excess and shall continue to accrue on the balance of the excess  
10 until returned.

11 (d) The commission shall make every effort to complete its  
12 deliberations and issue its decision as expeditiously as  
13 possible and before nine months from the date the public utility  
14 filed its completed application; provided that in carrying out  
15 this mandate, the commission shall require all parties to a  
16 proceeding to comply strictly with procedural time schedules  
17 that it establishes. If a decision is rendered after the nine-  
18 month period, the commission shall report in writing the reasons  
19 therefor to the legislature within thirty days after rendering  
20 the decision.

21 Notwithstanding subsection (c), if the commission has not  
22 issued its final decision on a public utility's rate application



1 within the nine-month period stated in this section, the  
2 commission, within one month after the expiration of the nine-  
3 month period, shall render an interim decision allowing the  
4 increase in rates, fares and charges, if any, to which the  
5 commission, based on the evidentiary record before it, believes  
6 the public utility is probably entitled. The commission may  
7 postpone its interim rate decision for thirty days if the  
8 commission considers the evidentiary hearings incomplete. In  
9 the event interim rates are made effective, the commission shall  
10 require by order the public utility to return, in the form of an  
11 adjustment to rates, fares, or charges to be billed in the  
12 future, any amounts with interest, at a rate equal to the rate  
13 of return on the public utility's rate base found to be  
14 reasonable by the commission, received under the interim rates  
15 that are in excess of the rates, fares, or charges finally  
16 determined to be just and reasonable by the commission.  
17 Interest on any excess shall commence as of the date that any  
18 rate, fare, or charge goes into effect that results in the  
19 excess and shall continue to accrue on the balance of the excess  
20 until returned.

21 The nine-month period in this subsection shall begin only  
22 after a completed application has been filed with the commission



1 and a copy served on the consumer advocate. The commission  
2 shall establish standards concerning the data required to be set  
3 forth in the application for it to be deemed a completed  
4 application. The consumer advocate may, within twenty-one days  
5 after receipt, object to the sufficiency of any application, and  
6 the commission shall hear and determine any objection within  
7 twenty-one days after it is filed. If the commission finds that  
8 the objections are without merit, the application shall be  
9 deemed to have been completed upon original filing. If the  
10 commission finds the application to be incomplete, it shall  
11 require the applicant to submit an amended application  
12 consistent with its findings, and the nine-month period shall  
13 not commence until the amended application is filed.

14 (e) In any case of two or more organizations, trades, or  
15 businesses (whether or not incorporated, whether or not  
16 organized in the State of Hawaii, and whether or not affiliated)  
17 owned or controlled directly or indirectly by the same  
18 interests, the commission may distribute, apportion, or allocate  
19 gross income, deductions, credits, or allowances between or  
20 among the organizations, trades, or businesses, if it determines  
21 that the distribution, apportionment, or allocation is necessary  
22 to adequately reflect the income of any ~~such~~ of the



1 organizations, trades, or businesses to carry out the regulatory  
2 duties imposed by this section.

3 (f) Notwithstanding any law to the contrary, for public  
4 utilities having annual gross revenues of less than \$2,000,000,  
5 the commission may make and amend its rules and procedures to  
6 provide the commission with sufficient facts necessary to  
7 determine the reasonableness of the proposed rates without  
8 unduly burdening the utility company and its customers. In the  
9 determination of the reasonableness of the proposed rates, the  
10 commission shall:

11 (1) Require the filing of a standard form application to  
12 be developed by the commission. The standard form  
13 application for general rate increases shall describe  
14 the specific facts that shall be submitted to support  
15 a determination of the reasonableness of the proposed  
16 rates, and require the submission of financial  
17 information in conformance with a standard chart of  
18 accounts to be approved by the commission, and other  
19 commission guidelines to allow expeditious review of a  
20 requested general rate increase application;

21 (2) Hold a public hearing as prescribed in section  
22 269-12(c) at which the consumers or patrons of the



1 public utility may present testimony to the commission  
2 concerning the increase. The public hearing shall be  
3 preceded by proper notice, as prescribed in section  
4 269-12; and

- 5 (3) Make every effort to complete its deliberations and  
6 issue a proposed decision and order within six months  
7 from the date the public utility files a completed  
8 application with the commission; provided that all  
9 parties to the proceeding strictly comply with the  
10 procedural schedule established by the commission and  
11 no person is permitted to intervene. If a proposed  
12 decision and order is rendered after the six-month  
13 period, the commission shall report in writing the  
14 reasons therefor to the legislature within thirty days  
15 after rendering the proposed decision and order.  
16 Prior to the issuance of the commission's proposed  
17 decision and order, the parties shall not be entitled  
18 to a contested case hearing.

19 If all parties to the proceeding accept the  
20 proposed decision and order, the parties shall not be  
21 entitled to a contested case hearing, and section  
22 269-15.5 shall not apply. If the commission permits a



1 person to intervene, the six-month period shall not  
2 apply and the commission shall make every effort to  
3 complete its deliberations and issue its decision  
4 within the nine-month period from the date the public  
5 utility's completed application was filed, pursuant to  
6 subsections (b), (c), and (d).

7 If a party does not accept the proposed decision  
8 and order, either in whole or in part, that party  
9 shall give notice of its objection or nonacceptance  
10 within the timeframe prescribed by the commission in  
11 the proposed decision and order, setting forth the  
12 basis for its objection or nonacceptance; provided  
13 that the proposed decision and order shall have no  
14 force or effect pending the commission's final  
15 decision. If notice is filed, the above six-month  
16 period shall not apply and the commission shall make  
17 every effort to complete its deliberations and issue  
18 its decision within the nine-month period from the  
19 date the public utility's completed application was  
20 filed as set forth in subsection (d). Any party that  
21 does not accept the proposed decision and order under  
22 this paragraph shall be entitled to a contested case



1 hearing; provided that the parties to the proceeding  
2 may waive the contested case hearing.

3 Public utilities subject to this subsection shall follow  
4 the standard chart of accounts to be approved by the commission  
5 for financial reporting purposes. The public utilities shall  
6 file a certified copy of the annual financial statements in  
7 addition to an updated chart of accounts used to maintain their  
8 financial records with the commission and consumer advocate  
9 within ninety days from the end of each calendar or fiscal year,  
10 as applicable, unless this timeframe is extended by the  
11 commission. The owner, officer, general partner, or authorized  
12 agent of the utility shall certify that the reports were  
13 prepared in accordance with the standard chart of accounts.

14 (g) Any automatic fuel rate adjustment clause requested by  
15 a public utility in an application filed with the commission  
16 shall be designed, as determined in the commission's discretion,  
17 to:

- 18 (1) Fairly share the risk of fuel cost changes between the  
19 public utility and its customers;
- 20 (2) Provide the public utility with sufficient incentive  
21 to reasonably manage or lower its fuel costs and  
22 encourage greater use of renewable energy;



- 1 (3) Allow the public utility to mitigate the risk of  
2 sudden or frequent fuel cost changes that cannot  
3 otherwise reasonably be mitigated through other  
4 commercially available means, such as through fuel  
5 hedging contracts;
- 6 (4) Preserve, to the extent reasonably possible, the  
7 public utility's financial integrity; and
- 8 (5) Minimize, to the extent reasonably possible, the  
9 public utility's need to apply for frequent  
10 applications for general rate increases to account for  
11 the changes to its fuel costs.

12 (h) Notwithstanding any law to the contrary, this chapter  
13 shall not apply to the rates, fares, and charges of the  
14 incumbent local exchange carrier, and the incumbent local  
15 exchange carrier shall not be required to obtain approval or  
16 provide any cost support or other information to establish or  
17 otherwise modify in any manner its rates, fares, and charges and  
18 shall not be required to bundle any service offerings into a  
19 single or combined pricing package. Notwithstanding the above,  
20 all rates, fares, charges, and bundled service offerings shall  
21 be filed with the commission for informational purposes only and  
22 become effective immediately upon filing."



1 SECTION 24. Section 269-51, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§269-51 Consumer advocate; director of commerce and  
4 consumer affairs. The director of commerce and consumer affairs  
5 shall be the consumer advocate in hearings before the public  
6 utilities commission[-] and the Hawaii broadband commissioner.  
7 The consumer advocate shall represent, protect, and advance the  
8 interests of all consumers, including small businesses, of  
9 utility services. The consumer advocate shall not receive any  
10 salary in addition to the salary received as director of  
11 commerce and consumer affairs.

12 The responsibility for advocating the interests of the  
13 consumer of utility services shall be separate and distinct from  
14 the responsibilities of the public utilities commission and  
15 those assistants employed by the commission. As consumer  
16 advocate, the director of commerce and consumer affairs shall  
17 have full rights to participate as a party in interest in all  
18 proceedings before the public utilities commission[-] and the  
19 Hawaii broadband commissioner."

20 SECTION 25. Section 269-54, Hawaii Revised Statutes, is  
21 amended by amending subsections (d) and (e) to read as follows:



1           "(d) Whenever it appears to the consumer advocate that:  
2    (1) any public utility, telecommunications carrier, or cable  
3    operator has violated or failed to comply with any provision of  
4    this part or of any state or federal law; (2) any public  
5    utility, telecommunications carrier, or cable operator has  
6    failed to comply with any rule, regulation, or other requirement  
7    of the public utilities commission, the Hawaii broadband  
8    commissioner, or of any other state or federal agency; (3) any  
9    public utility, telecommunications carrier, or cable operator  
10   has failed to comply with any provision of its charter,  
11   certificate of public convenience and necessity, or franchise;  
12   (4) changes, additions, extensions, or repairs to the plant or  
13   service of any public utility, telecommunications carrier, or  
14   cable operator are necessary to meet the reasonable convenience  
15   or necessity of the public; or (5) the rates, fares,  
16   classifications, charges, or rules of any public utility,  
17   telecommunications carrier, or cable operator are unreasonable  
18   or unreasonably discriminatory, the consumer advocate may  
19   institute proceedings for appropriate relief before the public  
20   utilities commission[-] or the Hawaii broadband commissioner, as  
21   applicable. The consumer advocate may appeal any final decision



1 and order in any proceeding to which the consumer advocate is a  
2 party in the manner provided by law.

3 (e) The consumer advocate may file with the public  
4 utilities commission or the Hawaii broadband commissioner, as  
5 the case may be, and serve on any public utility,  
6 telecommunications carrier, or cable operator a request in  
7 writing to furnish any information reasonably relevant to any  
8 matter or proceeding before the public utilities commission or  
9 the Hawaii broadband commissioner or reasonably required by the  
10 consumer advocate to perform the duties hereunder. Any [~~such~~]  
11 request shall set forth with reasonable specificity the purpose  
12 for which the information is requested and shall designate with  
13 reasonable specificity the information desired. The public  
14 utility, telecommunications carrier, or cable operator shall  
15 comply with [~~such~~] the request within the time limit set forth  
16 by the consumer advocate unless within ten days following  
17 service it requests a hearing on the matter before the public  
18 utilities commission or the Hawaii broadband commissioner and  
19 states its reasons therefor. If a hearing is requested, the  
20 public utilities commission or the Hawaii broadband  
21 commissioner, as the case may be, shall proceed to hold the  
22 hearing and make its determination on the request within thirty



1 days after the same is filed. The consumer advocate or the  
2 public utility may appeal the decision of the commission on any  
3 [~~such~~] request, subject to chapter 602, in the manner provided  
4 for civil appeals from the circuit courts. The consumer  
5 advocate, telecommunications carrier, or cable operator may  
6 appeal the decision of the Hawaii broadband commissioner, in the  
7 manner provided for in section -16. Subject to the  
8 foregoing, such requests may ask the public utility,  
9 telecommunications carrier, or cable operator to:

- 10 (1) Furnish any information [~~with which~~] that the consumer  
11 advocate may require concerning the condition,  
12 operations, practices, or services of the public  
13 utility[~~]~~, telecommunications carrier, or cable  
14 operator;
- 15 (2) Produce and permit the consumer advocate or the  
16 consumer advocate's representative to inspect and copy  
17 any designated documents (including writings,  
18 drawings, graphs, charts, photographs, recordings, and  
19 other data compilations from which information can be  
20 obtained), or to inspect and copy, test, or sample any  
21 designated tangible thing which is in the possession,



1 custody, or control of the public utility[+],  
 2 telecommunications carrier, or cable operator; or  
 3 (3) Permit entry upon land or other property in the  
 4 possession or control of the public utility,  
 5 telecommunications carrier, or cable operator for the  
 6 purpose of inspection and measuring, surveying,  
 7 photographing, testing, or sampling the property or  
 8 any designated object thereon."

9 SECTION 26. Section 269-55, Hawaii Revised Statutes, is  
 10 amended to read as follows:

11 "**§269-55 Handling of complaints.** The consumer advocate  
 12 shall counsel public utility, telecommunications, and cable  
 13 service customers in the handling of consumer complaints before  
 14 the public utilities commission[-] or the Hawaii broadband  
 15 commissioner. The public utilities commission shall provide a  
 16 central clearinghouse of information by collecting and compiling  
 17 all consumer complaints and inquiries concerning public  
 18 utilities. The Hawaii broadband commissioner shall provide a  
 19 central clearinghouse of information by collecting and compiling  
 20 all consumer complaints and inquiries concerning  
 21 telecommunications carriers and cable operators."



1 SECTION 27. Section 339K-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+] §339K-2 [+] **Compact administrator.** The compact  
4 administrator, acting jointly with like officers of other party  
5 states, may [~~promulgate~~] adopt rules and regulations to carry  
6 out more effectively the terms of the compact. The compact  
7 administrator shall cooperate with all departments, agencies,  
8 and officers of and in the government of this State and its  
9 subdivisions in facilitating the present administration of the  
10 compact or of any supplementary agreement or agreements entered  
11 into by this State thereunder. The compact administrator shall  
12 adopt the practices and may impose the fees authorized under  
13 article III of the compact, except that state and county law  
14 enforcement agencies [~~and~~], the public utilities commission, and  
15 the Hawaii broadband commissioner shall retain their enforcement  
16 and inspection authority relating to carriers."

17 SECTION 28. Section 356D-15, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19 "(b) The authority may acquire by the exercise of the  
20 power of eminent domain property already devoted to a public  
21 use; provided that no property belonging to any government may  
22 be acquired without its consent, and that no property belonging



1 to a public utility may be acquired without the approval of the  
2 public utilities commission[+] or, in the case of  
3 telecommunications carriers or telecommunications common  
4 carriers, the Hawaii broadband commissioner; and provided  
5 further that the acquisition is subject to legislative  
6 disapproval expressed in a concurrent resolution adopted by  
7 majority vote of the senate and the house of representatives in  
8 the first regular or special session following the date of  
9 condemnation."

10 SECTION 29. Section 448E-13, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§448E-13 Exemption of public utility and [~~community~~  
13 ~~antennae~~] cable television company employees. All employees of  
14 a public utility within the State under a franchise or charter  
15 granted by the State [~~which~~] that is regulated by the public  
16 utilities commission or the Hawaii broadband commissioner and  
17 [~~community antennae television company,~~] a cable television  
18 franchisee, while so employed, shall be exempt from the  
19 provision of this chapter."

20 SECTION 30. Section 481-11, Hawaii Revised Statutes, is  
21 amended to read as follows:



1           "**§481-11 Remedies cumulative.** The remedies prescribed in  
2 this part are cumulative and in addition to the remedies  
3 prescribed in [~~chapter~~] chapters 269 and \_\_\_\_\_ for discriminations  
4 by public utilities. If any conflict arises between this part  
5 and chapter 269 [~~, the latter prevails.~~] or chapter \_\_\_\_\_, chapter  
6 269 or chapter \_\_\_\_\_, whichever is applicable, shall prevail."

7           SECTION 31. Section 481P-5, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "**§481P-5 Exemptions.** This chapter shall not apply to:

- 10           (1) A person who initiates telephone calls to a residence  
11           for the sole purpose of polling or soliciting the  
12           expression of ideas, opinions, or votes, or a person  
13           soliciting solely for a political or religious cause  
14           or purpose;
- 15           (2) A securities broker-dealer, salesperson, investment  
16           adviser, or investment adviser representative who is  
17           registered with this State to sell securities or who  
18           is authorized to sell securities in this State  
19           pursuant to federal securities laws, when soliciting  
20           over the telephone within the scope of the person's  
21           registration;



- 1           (3) A financial institution that is authorized to accept  
2           deposits under its chartering or licensing authority  
3           where such deposits are insured by the Federal Deposit  
4           Insurance Corporation or the National Credit Union  
5           Administration, including but not limited to a bank,  
6           savings bank, savings and loan association, depository  
7           financial services loan company, or credit union, or a  
8           nondepository financial services loan company that is  
9           licensed or authorized to conduct business in this  
10          State by the commissioner of financial institutions,  
11          or an affiliate or subsidiary of a financial  
12          institution as defined in chapter 412;
- 13          (4) A person or organization that is licensed or  
14          authorized to conduct business in this State by the  
15          insurance commissioner including but not limited to an  
16          insurance company and its employees, while engaged in  
17          the business of selling or advertising the sale of  
18          insurance products or services;
- 19          (5) A college or university accredited by an accrediting  
20          organization recognized by the United States  
21          Department of Education;



- 1           (6) A person who publishes a catalog of at least fifteen  
2           pages, four times a year, with a circulation of at  
3           least one hundred thousand, where the catalog includes  
4           clear disclosure of sale prices, shipping, handling,  
5           and other charges;
- 6           (7) A political subdivision or instrumentality of the  
7           United States, or any state of the United States;
- 8           (8) The sale of goods or services by telecommunications or  
9           landline (i.e., cable) or wireless video service  
10          providers, for which the terms and conditions of the  
11          offering, production, or sale are regulated by the  
12          ~~[public utilities commission]~~ Hawaii broadband  
13          commissioner or the Federal Communications Commission,  
14          ~~[or pursuant to chapter 440G,]~~ including the sale of  
15          goods or services by affiliates of these  
16          telecommunications or video service providers.  
17          Nothing herein shall be construed to preclude or  
18          preempt actions brought under any other laws including  
19          chapter 480;
- 20          (9) A real estate broker or salesperson who is licensed by  
21          this State to sell real estate, when soliciting within  
22          the scope of the license; or



1 (10) A travel agency that is registered with this State,  
2 when engaging in the business of selling or  
3 advertising the sale of travel services."

4 SECTION 32. Section 481X-1, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) This chapter shall not apply to:

7 (1) Express or implied warranties;

8 (2) Maintenance agreements; and

9 (3) Warranties, service contracts, and maintenance  
10 agreements offered by public utilities on their  
11 transmission devices to the extent they are regulated  
12 by the public utilities commission or the [~~department~~  
13 ~~of commerce and consumer affairs.~~] Hawaii broadband  
14 commissioner."

15 SECTION 33. Section 486J-11, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "~~§486J-11 Powers of the public utilities commission[-]~~ and  
18 the Hawaii broadband commissioner. (a) The public utilities  
19 commission and the Hawaii broadband commissioner may take any  
20 action or make any determination under this chapter, including  
21 but not limited to actions or determinations that affect persons  
22 not regulated under chapters 269, \_\_\_\_, 271, and 271G, as the



1 public utilities commission or the Hawaii broadband commissioner  
2 deems necessary to carry out its responsibilities or otherwise  
3 effectuate chapter 269, \_\_\_\_, 271, or 271G.

4 (b) The public utilities commission or, in the case of  
5 telecommunications carriers or telecommunications common  
6 carriers, the Hawaii broadband commissioner, may examine or  
7 investigate each distributor, the manner in which it is  
8 operated, its prices and rates, its operating costs and  
9 expenses, the value of its property and assets, the amount and  
10 disposition of its income, any of its financial transactions,  
11 its business relations with other persons, companies, or  
12 corporations, its compliance with all applicable state and  
13 federal laws, and all matters of any nature affecting the  
14 relations and transactions between the distributor and the  
15 public, persons, or businesses.

16 (c) In the performance of its duties under this chapter,  
17 the public utilities commission and the Hawaii broadband  
18 commissioner shall have the same powers respecting administering  
19 oaths, compelling the attendance of witnesses and the production  
20 of documents, examining witnesses, and punishing for contempt,  
21 as are possessed by the circuit courts. In case of disobedience  
22 by any person to any order of or subpoena issued by the public



1 utilities commission[7] or the Hawaii broadband commissioner, or  
2 of the refusal of any witness to testify to any matter regarding  
3 which the witness may be lawfully questioned, any circuit court,  
4 upon application by the public utilities commission[7] or the  
5 Hawaii broadband commissioner, shall compel obedience as in case  
6 of disobedience of the requirements of a subpoena issued from a  
7 circuit court or a refusal to testify therein."

8 SECTION 34. Section 659-3, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[+]§659-3[+] **Forfeiture of franchise.** The several  
11 circuit courts shall have jurisdiction of all proceedings in, or  
12 in the nature of, quo warranto, brought by or in the name of the  
13 public utilities commission, the Hawaii broadband commissioner,  
14 or the State, for the forfeiture of the franchise of any  
15 corporate body offending against any law relating to such  
16 corporation, for misuser, for nonuser, for doing or committing  
17 any act or acts amounting to a surrender of its charter and for  
18 exercising rights not conferred upon it."

19 SECTION 35. Section 708-800, Hawaii Revised Statutes, is  
20 amended by amending the definition of "telecommunication  
21 service" to read as follows:



1            "Telecommunication service" means the offering of  
2 transmission between or among points specified by a user, of  
3 information of the user's choosing, including voice, data,  
4 image, graphics, and video without change in the form or content  
5 of the information, as sent and received, by means of  
6 electromagnetic transmission, or other similarly capable means  
7 of transmission, with or without benefit of any closed  
8 transmission medium, and does not include cable service as  
9 defined in section [440G-3-]       -1."

10           SECTION 36. Section 269-16.5, Hawaii Revised Statutes, is  
11 repealed.

12           ~~["§269-16.5 Lifeline telephone rates. (a) The public~~  
13 ~~utilities commission shall implement a program to achieve~~  
14 ~~lifeline telephone rates for residential telephone users.~~

15           ~~(b) "Lifeline telephone rate" means a discounted rate for~~  
16 ~~residential telephone users identified as elders with limited~~  
17 ~~income and the handicapped with limited income as designated by~~  
18 ~~the commission.~~

19           ~~(c) The commission shall require every telephone public~~  
20 ~~utility providing local telephone service to file a schedule of~~  
21 ~~rates and charges providing a rate for lifeline telephone~~  
22 ~~subscribers.~~



1       ~~(d) Nothing in this section shall preclude the commission~~  
2 ~~from changing any rate established pursuant to subsection (a)~~  
3 ~~either specifically or pursuant to any general restructuring of~~  
4 ~~all telephone rates, charges, and classifications." ]~~

5       SECTION 37. Section 269-16.6, Hawaii Revised Statutes, is  
6 repealed.

7       ~~["§269-16.6 Telecommunications relay services for the~~  
8 ~~deaf, persons with hearing disabilities, and persons with speech~~  
9 ~~disabilities. (a) The public utilities commission shall~~  
10 ~~implement intrastate telecommunications relay services for the~~  
11 ~~deaf, persons with hearing disabilities, and persons with speech~~  
12 ~~disabilities.~~

13       ~~(b) The commission shall investigate the availability of~~  
14 ~~experienced providers of quality telecommunications relay~~  
15 ~~services for the deaf, persons with hearing disabilities, and~~  
16 ~~persons with speech disabilities. The provision of these~~  
17 ~~telecommunications relay services to be rendered on or after~~  
18 ~~July 1, 1992, shall be awarded by the commission to the provider~~  
19 ~~or providers the commission determines to be best qualified to~~  
20 ~~provide these services. In reviewing the qualifications of the~~  
21 ~~provider or providers, the commission shall consider the factors~~



1 ~~of cost, quality of services, and experience, and such other~~  
2 ~~factors as the commission deems appropriate.~~

3 ~~(c) If the commission determines that the~~  
4 ~~telecommunications relay service can be provided in a cost-~~  
5 ~~effective manner by a service provider or service providers, the~~  
6 ~~commission may require every intrastate telecommunications~~  
7 ~~carrier to contract with such provider or providers for the~~  
8 ~~provision of the telecommunications relay service under the~~  
9 ~~terms established by the commission.~~

10 ~~(d) The commission may establish a surcharge to collect~~  
11 ~~customer contributions for telecommunications relay services~~  
12 ~~required under this section.~~

13 ~~(e) The commission may adopt rules to establish a~~  
14 ~~mechanism to recover the costs of administering and providing~~  
15 ~~telecommunications relay services required under this section.~~

16 ~~(f) The commission shall require every intrastate~~  
17 ~~telecommunications carrier to file a schedule of rates and~~  
18 ~~charges and every provider of telecommunications relay service~~  
19 ~~to maintain a separate accounting for the costs of providing~~  
20 ~~telecommunications relay services for the deaf, persons with~~  
21 ~~hearing disabilities, and persons with speech disabilities.~~



1       ~~(g) Nothing in this section shall preclude the commission~~  
2 ~~from changing any rate established pursuant to this section~~  
3 ~~either specifically or pursuant to any general restructuring of~~  
4 ~~all telephone rates, charges, and classifications.~~

5       ~~(h) As used in this section:~~

6       ~~"Telecommunications relay services" means telephone~~  
7 ~~transmission services that provide an individual who has a~~  
8 ~~hearing or speech disability the ability to engage in~~  
9 ~~communication by wire or radio with a hearing individual in a~~  
10 ~~manner that is functionally equivalent to the ability of an~~  
11 ~~individual who does not have a hearing or speech disability to~~  
12 ~~communicate using wire or radio voice communication services.~~

13 ~~"Telecommunications relay services" includes services that~~  
14 ~~enable two way communication using text telephones or other~~  
15 ~~nonvoice terminal devices, speech to speech services, video~~  
16 ~~relay services, and non English relay services." ]~~

17       SECTION 38. Section 269-16.8, Hawaii Revised Statutes, is  
18 repealed.

19       ~~["**~~§269-16.8~~** **Aggregators of telephone service**~~  
20 ~~requirements.~~ (a) ~~For the purposes of this section:~~

21       ~~"Aggregator" means every person or entity that is not a~~  
22 ~~telecommunications carrier, who, in the ordinary course of its~~



1 ~~business, makes telephones available and aggregates the calls of~~  
2 ~~the public or transient users of its business, including but not~~  
3 ~~limited to a hotel, motel, hospital, or university, that~~  
4 ~~provides operator assisted services through access to an~~  
5 ~~operator service provider.~~

6 ~~"Operator service" means a service provided by a~~  
7 ~~telecommunications company to assist a customer to complete a~~  
8 ~~telephone call.~~

9 ~~(b) The commission, by rule or order, shall adopt and~~  
10 ~~enforce operating requirements for the provision of operator~~  
11 ~~assisted services by an aggregator. These requirements shall~~  
12 ~~include, but not be limited to, the following:~~

13 ~~(1) Posting and display of information in a prominent and~~  
14 ~~conspicuous fashion on or near the telephone equipment~~  
15 ~~owned or controlled by the aggregator which states the~~  
16 ~~identity of the operator service provider, the~~  
17 ~~operator service provider's complaint handling~~  
18 ~~procedures, and means by which the customer may access~~  
19 ~~the various operator service providers.~~

20 ~~(2) Identification by name of the operator service~~  
21 ~~provider prior to the call connection and, if not~~  
22 ~~posted pursuant to subsection (b) (1), a disclosure of~~



1 ~~pertinent rates, terms, conditions, and means of~~  
2 ~~access to various operator service providers and the~~  
3 ~~local exchange carriers; provided that the operator~~  
4 ~~service provider shall disclose this information at~~  
5 ~~any time upon request by the customer.~~

6 ~~(3) Allowing the customer access to any operator service~~  
7 ~~provider operating in the relevant geographic area~~  
8 ~~through the access method chosen by the provider or as~~  
9 ~~deemed appropriate by the commission.~~

10 ~~(4) Other requirements as deemed reasonable by the~~  
11 ~~commission in the areas of public safety, quality of~~  
12 ~~service, unjust or discriminatory pricing, or other~~  
13 ~~matters in the public interest." ]~~

14 SECTION 39. Section 269-16.9, Hawaii Revised Statutes, is  
15 repealed.

16 [~~§269-16.9 Telecommunications providers and services.~~

17 ~~(a) Notwithstanding any provision of this chapter to the~~  
18 ~~contrary, the commission, upon its own motion or upon the~~  
19 ~~application of any person, and upon notice and hearing, may~~  
20 ~~exempt a telecommunications provider or a telecommunications~~  
21 ~~service from any or all of the provisions of this chapter,~~  
22 ~~except the provisions of section 269-34, upon a determination~~



1 ~~that the exemption is in the public interest. In determining~~  
2 ~~whether an exemption is in the public interest, the commission~~  
3 ~~shall consider whether the exemption promotes state policies in~~  
4 ~~telecommunications, the development, maintenance, and operation~~  
5 ~~of effective and economically efficient telecommunications~~  
6 ~~services, and the furnishing of telecommunications services at~~  
7 ~~just and reasonable rates and in a fair manner in view of the~~  
8 ~~needs of the various customer segments of the telecommunications~~  
9 ~~industry. Among the specific factors the commission may~~  
10 ~~consider are:~~

- 11 ~~(1) The responsiveness of the exemption to changes in the~~  
12 ~~structure and technology of the State's~~  
13 ~~telecommunications industry;~~
- 14 ~~(2) The benefits accruing to the customers and users of~~  
15 ~~the exempt telecommunications provider or service;~~
- 16 ~~(3) The impact of the exemption on the quality,~~  
17 ~~efficiency, and availability of telecommunications~~  
18 ~~services;~~
- 19 ~~(4) The impact of the exemption on the maintenance of~~  
20 ~~fair, just, and reasonable rates for~~  
21 ~~telecommunications services;~~



- 1       ~~(5) The likelihood of prejudice or disadvantage to~~  
2       ~~ratepayers of basic local exchange service resulting~~  
3       ~~from the exemption;~~
- 4       ~~(6) The effect of the exemption on the preservation and~~  
5       ~~promotion of affordable, universal, basic~~  
6       ~~telecommunications services as those services are~~  
7       ~~determined by the commission;~~
- 8       ~~(7) The resulting subsidization, if any, of the exempt~~  
9       ~~telecommunications service or provider by nonexempt~~  
10       ~~services;~~
- 11       ~~(8) The impact of the exemption on the availability of~~  
12       ~~diversity in the supply of telecommunications services~~  
13       ~~throughout the State;~~
- 14       ~~(9) The improvements in the regulatory system to be gained~~  
15       ~~from the exemption, including the reduction in~~  
16       ~~regulatory delays and costs;~~
- 17       ~~(10) The impact of the exemption on promoting innovations~~  
18       ~~in telecommunications services;~~
- 19       ~~(11) The opportunity provided by the exemption for~~  
20       ~~telecommunications providers to respond to~~  
21       ~~competition; and~~



1       ~~(12) The potential for the exercise of substantial market~~  
2           ~~power by the exempt provider or by a provider of the~~  
3           ~~exempt telecommunications service.~~

4       ~~(b) The commission shall expedite, where practicable, the~~  
5       ~~regulatory process with respect to exemptions and shall adopt~~  
6       ~~guidelines under which each provider of an exempted service~~  
7       ~~shall be subject to similar terms and conditions.~~

8       ~~(c) The commission may condition or limit any exemption as~~  
9       ~~the commission deems necessary in the public interest. The~~  
10       ~~commission may provide a trial period for any exemption and may~~  
11       ~~terminate the exemption or continue it for such period and under~~  
12       ~~such conditions and limitations as it deems appropriate.~~

13       ~~(d) The commission may require a telecommunications~~  
14       ~~provider to apply for a certificate of public convenience and~~  
15       ~~necessity pursuant to section 269 7.5; provided that the~~  
16       ~~commission may waive any application requirement whenever it~~  
17       ~~deems the waiver to be in furtherance of the purposes of this~~  
18       ~~section. The exemptions under this section may be granted in a~~  
19       ~~proceeding for certification or in a separate proceeding.~~

20       ~~(e) The commission may waive other regulatory requirements~~  
21       ~~under this chapter applicable to telecommunications providers~~



1 ~~when it determines that competition will serve the same purpose~~  
2 ~~as public interest regulation.~~

3 ~~(f) If any provider of an exempt telecommunications~~  
4 ~~service or any exempt telecommunications provider elects to~~  
5 ~~terminate its service, it shall provide notice of this to its~~  
6 ~~customers, the commission, and every telephone public utility~~  
7 ~~providing basic local exchange service in this State. The~~  
8 ~~notice shall be in writing and given not less than six months~~  
9 ~~before the intended termination date. Upon termination of~~  
10 ~~service by a provider of an exempt service or by an exempt~~  
11 ~~provider, the appropriate telephone public utility providing~~  
12 ~~basic local exchange service shall ensure that all customers~~  
13 ~~affected by the termination receive basic local exchange~~  
14 ~~service. The commission shall, upon notice and hearing or by~~  
15 ~~rule, determine the party or parties who shall bear the cost, if~~  
16 ~~any, of access to the basic local exchange service by the~~  
17 ~~customers of the terminated exempt service.~~

18 ~~(g) Upon the petition of any person or upon its own~~  
19 ~~motion, the commission may rescind any exemption or waiver~~  
20 ~~granted under this section if, after notice and hearing, it~~  
21 ~~finds that the conditions prompting the granting of the~~  
22 ~~exemption or waiver no longer apply, or that the exemption or~~



1 ~~waiver is no longer in the public interest, or that the~~  
2 ~~telecommunications provider has failed to comply with one or~~  
3 ~~more of the conditions of the exemption or applicable statutory~~  
4 ~~or regulatory requirements.~~

5 ~~(h) For purposes of this section, the commission, upon~~  
6 ~~determination that any area of the State has less than adequate~~  
7 ~~telecommunications service, shall require the existing~~  
8 ~~telecommunications provider to show cause as to why the~~  
9 ~~commission should not authorize an alternative~~  
10 ~~telecommunications provider for that area under the terms and~~  
11 ~~conditions of this section." ]~~

12 SECTION 40. Section 269-16.91, Hawaii Revised Statutes, is  
13 repealed.

14 [~~§269-16.91~~] ~~Universal service subsidies.~~ (a) ~~For any~~  
15 ~~alternative telecommunications provider authorized to provide~~  
16 ~~basic local exchange service to any area of the State pursuant~~  
17 ~~to section 269-16.9(h), the commission may consider the~~  
18 ~~following:~~

19 ~~(1) Transferring the subsidy, if any, of the local~~  
20 ~~exchange provider's basic residential telephone~~  
21 ~~service to the alternative provider; and~~



1       ~~(2) Transferring from the local exchange carrier to the~~  
2           ~~alternative provider the amounts, if any, generated by~~  
3           ~~the local exchange provider's services other than~~  
4           ~~basic residential telephone service and which are used~~  
5           ~~to subsidize basic residential service in the area.~~

6       ~~(b) To receive the subsidy amounts from the local exchange~~  
7       ~~service provider, the alternative telecommunications provider~~  
8       ~~shall be required, to the extent possible, to obtain basic~~  
9       ~~residential service subsidies from both the local exchange~~  
10       ~~service provider and national universal service providers." ]~~

11       SECTION 41. Section 269-16.92, Hawaii Revised Statutes, is  
12       repealed.

13       ~~["~~§269-16.92~~ Changes in subscriber carrier selections;~~  
14       ~~prior authorization required; penalties for unauthorized~~  
15       ~~changes. (a) No telecommunications carrier shall initiate a~~  
16       ~~change in a subscriber's selection or designation of a long-~~  
17       ~~distance carrier without first receiving:~~

18           ~~(1) A letter of agency or letter of authorization;~~

19           ~~(2) An electronic authorization by use of a toll free~~  
20           ~~number;~~

21           ~~(3) An oral authorization verified by an independent third~~  
22           ~~party; or~~



1       ~~(4) Any other prescribed authorization,~~  
2       ~~provided that the letter or authorization shall be in accordance~~  
3       ~~with verification procedures that are prescribed by the Federal~~  
4       ~~Communications Commission or the public utilities commission.~~  
5       ~~For purposes of this section, "telecommunications carrier" does~~  
6       ~~not include a provider of commercial mobile radio service as~~  
7       ~~defined by 47 United States Code section 332(d)(1).~~

8       ~~(b) Upon a determination that any telecommunications~~  
9       ~~carrier has engaged in conduct that is prohibited in subsection~~  
10      ~~(a), the public utilities commission shall order the carrier to~~  
11      ~~take corrective action as deemed necessary by the commission and~~  
12      ~~may subject the telecommunications carrier to administrative~~  
13      ~~penalties pursuant to section 269-28. Any proceeds from~~  
14      ~~administrative penalties collected under this section shall be~~  
15      ~~deposited into the public utilities commission special fund.~~

16      ~~The commission, if consistent with the public interest, may~~  
17      ~~suspend, restrict, or revoke the registration, charter, or~~  
18      ~~certificate of the telecommunications carrier, thereby denying,~~  
19      ~~modifying, or limiting the right of the telecommunications~~  
20      ~~carrier to provide service in this State.~~



1       ~~(c) The commission shall adopt rules, pursuant to chapter~~  
2       ~~91, necessary for the purposes of this section. The commission~~  
3       ~~may notify customers of their rights under these rules." ]~~

4           SECTION 42. Section 269-16.95, Hawaii Revised Statutes, is  
5       repealed.

6           ~~["§269-16.95 Emergency telephone service, capital costs,~~  
7       ~~ratemaking. (a) A public utility providing local exchange~~  
8       ~~telecommunications services may recover the capital cost and~~  
9       ~~associated operating expenses of providing a statewide enhanced~~  
10       ~~911 emergency telephone service in the public switched telephone~~  
11       ~~network, through:~~

12           ~~(1) A telephone line surcharge; or~~

13           ~~(2) Its rate case.~~

14           ~~(b) Notwithstanding the commission's rules on ratemaking,~~  
15       ~~the commission shall expedite and give highest priority to any~~  
16       ~~necessary ratemaking procedures related to providing a statewide~~  
17       ~~enhanced 911 emergency telephone service; provided that the~~  
18       ~~commission may set forth conditions and requirements as the~~  
19       ~~commission determines are in the public interest.~~

20           ~~(c) The commission shall require every public utility~~  
21       ~~providing statewide enhanced 911 emergency telephone service to~~  
22       ~~maintain a separate accounting of the costs of providing an~~



1 ~~enhanced 911 emergency service and the revenues received from~~  
2 ~~related surcharges until the next general rate case. The~~  
3 ~~commission shall further require that every public utility~~  
4 ~~imposing a surcharge shall identify such as a separate line item~~  
5 ~~on all customer billing statements.~~

6 ~~(d) This section shall not preclude the commission from~~  
7 ~~changing any rate, established pursuant to this section, either~~  
8 ~~specifically or pursuant to any general restructuring of all~~  
9 ~~telephone rates, charges, and classifications." ]~~

10 SECTION 43. Section 269-34, Hawaii Revised Statutes, is  
11 repealed.

12 ~~["~~§269-34~~ Obligations of telecommunications carriers.~~  
13 ~~In accordance with conditions and guidelines established by the~~  
14 ~~commission to facilitate the introduction of competition into~~  
15 ~~the State's telecommunications marketplace, each~~  
16 ~~telecommunications carrier, upon bona fide request, shall~~  
17 ~~provide services or information services, on reasonable terms~~  
18 ~~and conditions, to an entity seeking to provide intrastate~~  
19 ~~telecommunications, including:~~

20 ~~(1) Interconnection to the telecommunications carrier's~~  
21 ~~telecommunications facilities at any technically~~  
22 ~~feasible and economically reasonable point within the~~



- 1           ~~telecommunications carrier's network so that the~~  
2           ~~networks are fully interoperable;~~
- 3           ~~(2) The current interstate tariff used as the access rate~~  
4           ~~until the commission can adopt a new intrastate local~~  
5           ~~service interconnection tariff pursuant to section~~  
6           ~~269-37;~~
- 7           ~~(3) Nondiscriminatory and equal access to any~~  
8           ~~telecommunications carrier's telecommunications~~  
9           ~~facilities, functions, and the information necessary~~  
10           ~~to the transmission and routing of any~~  
11           ~~telecommunications service and the interoperability of~~  
12           ~~both carriers' networks;~~
- 13           ~~(4) Nondiscriminatory access among all telecommunications~~  
14           ~~carriers, where technically feasible and economically~~  
15           ~~reasonable, and where safety or the provision of~~  
16           ~~existing electrical service is not at risk, to the~~  
17           ~~poles, ducts, conduits, and rights of way owned or~~  
18           ~~controlled by the telecommunications carrier, or the~~  
19           ~~commission shall authorize access to electric~~  
20           ~~utilities' poles as provided by the joint pole~~  
21           ~~agreement, commission tariffs, rules, orders, or~~



1 ~~Federal Communications Commission rules and~~  
2 ~~regulations;~~

3 ~~(5) Nondiscriminatory access to the network functions of~~  
4 ~~the telecommunications carrier's telecommunications~~  
5 ~~network, that shall be offered on an unbundled,~~  
6 ~~competitively neutral, and cost based basis;~~

7 ~~(6) Telecommunications services and network functions~~  
8 ~~without unreasonable restrictions on the resale or~~  
9 ~~sharing of those services and functions; and~~

10 ~~(7) Nondiscriminatory access of customers to the~~  
11 ~~telecommunications carrier of their choice without the~~  
12 ~~need to dial additional digits or access codes, where~~  
13 ~~technically feasible. The commission shall determine~~  
14 ~~the equitable distribution of costs among the~~  
15 ~~authorized telecommunications carriers that will use~~  
16 ~~such access and shall establish rules to ensure such~~  
17 ~~access.~~

18 ~~Where possible, telecommunications carriers shall enter~~  
19 ~~into negotiations to agree on the provision of services or~~  
20 ~~information services without requiring intervention by the~~  
21 ~~commission; provided that any such agreement shall be subject to~~



1 ~~review by the commission to ensure compliance with the~~  
2 ~~requirements of this section."~~]

3 SECTION 44. Section 269-35, Hawaii Revised Statutes, is  
4 repealed.

5 [~~"§269-35 Universal service. The commission shall~~  
6 ~~preserve and advance universal service by:~~

7 ~~(1) Maintaining affordable, just, and reasonable rates for~~  
8 ~~basic residential service;~~

9 ~~(2) Assisting individuals or entities who cannot afford~~  
10 ~~the cost of or otherwise require assistance in~~  
11 ~~obtaining or maintaining their basic service or~~  
12 ~~equipment as determined by the commission; and~~

13 ~~(3) Ensuring that consumers are given the information~~  
14 ~~necessary to make informed choices among the~~  
15 ~~alternative telecommunications providers and~~  
16 ~~services."~~]

17 SECTION 45. Section 269-36, Hawaii Revised Statutes, is  
18 repealed.

19 [~~"§269-36 Telecommunications number portability. The~~  
20 ~~commission shall ensure that telecommunications number~~  
21 ~~portability within an exchange is available, upon request, as~~  
22 ~~soon as technically feasible and economically reasonable. An~~



1 ~~impartial entity shall administer telecommunications numbering~~  
2 ~~and make the numbers available on an equitable basis." ]~~

3 SECTION 46. Section 269-37, Hawaii Revised Statutes, is  
4 repealed.

5 [~~"[§269-37] Compensation agreements. The commission shall~~  
6 ~~ensure that telecommunications carriers are compensated on a~~  
7 ~~fair basis for termination of telecommunications services on~~  
8 ~~each other's networks, taking into account, among other things,~~  
9 ~~reasonable and necessary costs to each telecommunications~~  
10 ~~carrier of providing the services in question.~~  
11 ~~Telecommunications carriers may negotiate compensation~~  
12 ~~arrangements, that may include "bill and keep", mutual and equal~~  
13 ~~compensation, or any other reasonable division of revenues~~  
14 ~~pending tariff access rates to be set by the commission. Upon~~  
15 ~~failure of the negotiations, the commission shall determine the~~  
16 ~~proper methodology and amount of compensation." ]~~

17 SECTION 47. Section 269-38, Hawaii Revised Statutes, is  
18 repealed.

19 [~~"[§269-38] Regulatory flexibility for effectively~~  
20 ~~competitive services. The commission may allow~~  
21 ~~telecommunications carriers to have pricing flexibility for~~



1 ~~services that the commission finds are effectively competitive,~~  
2 ~~provided that the rates for:~~

- 3 ~~(1) Basic telephone service and for services that are not~~  
4 ~~effectively competitive are cost based and remain~~  
5 ~~just, reasonable, and nondiscriminatory; and~~  
6 ~~(2) Universal service is preserved and advanced." ]~~

7 SECTION 48. Section 269-39, Hawaii Revised Statutes, is  
8 repealed.

9 ~~["~~§269-39~~ Cross subsidies. (a) The commission shall~~  
10 ~~ensure that noncompetitive services shall not cross subsidize~~  
11 ~~competitive services. Cross subsidization shall be deemed to~~  
12 ~~have occurred.~~

13 ~~(1) If any competitive service is priced below the total~~  
14 ~~service long run incremental cost of providing the~~  
15 ~~service as determined by the commission in subsection~~  
16 ~~(b); or~~

17 ~~(2) If competitive services, taken as a whole, fail to~~  
18 ~~cover their direct and allocated joint and common~~  
19 ~~costs as determined by the commission.~~

20 ~~(b) The commission shall determine the methodology and~~  
21 ~~frequency with which providers calculate total service long run~~  
22 ~~incremental cost and fully allocated joint and common costs.~~



1 ~~The total service long run incremental cost of a service shall~~  
2 ~~include an imputation of an amount equal to the contribution~~  
3 ~~that the telecommunications carrier receives from noncompetitive~~  
4 ~~inputs used by alternative providers in providing the same or~~  
5 ~~equivalent service." ]~~

6 SECTION 49. Section 269-40, Hawaii Revised Statutes, is  
7 repealed.

8 ~~[ "~~§269-40~~ Access to advanced services. The commission~~  
9 ~~shall ensure that all consumers are provided with~~  
10 ~~nondiscriminatory, reasonable, and equitable access to high~~  
11 ~~quality telecommunications network facilities and capabilities~~  
12 ~~that provide subscribers with sufficient network capacity to~~  
13 ~~access information services that provide a combination of voice,~~  
14 ~~data, image, and video, and that are available at just,~~  
15 ~~reasonable, and nondiscriminatory rates that are based on~~  
16 ~~reasonably identifiable costs of providing the services." ]~~

17 SECTION 50. Section 269-41, Hawaii Revised Statutes, is  
18 repealed.

19 ~~[ "~~§269-41~~ Universal service program; establishment;~~  
20 ~~purpose; principles. There is established the universal service~~  
21 ~~program. The purpose of this program is to:~~



- 1       ~~(1) Maintain affordable, just, and reasonable rates for~~  
2       ~~basic residential telecommunications service, as~~  
3       ~~defined by the commission;~~
- 4       ~~(2) Assist customers located in the areas of the State~~  
5       ~~that have high costs of essential telecommunications~~  
6       ~~service, low income customers, and customers with~~  
7       ~~disabilities, in obtaining and maintaining access to a~~  
8       ~~basic set of essential telecommunications services as~~  
9       ~~determined by the commission. The commission may~~  
10       ~~expand or otherwise modify relevant programs, such as~~  
11       ~~the lifeline program under section 269-16.5;~~
- 12       ~~(3) Ensure that consumers in all communities are provided~~  
13       ~~with access, at reasonably comparable rates, to all~~  
14       ~~telecommunications services which are used by a~~  
15       ~~majority of consumers located in metropolitan areas of~~  
16       ~~the State. The commission shall provide for a~~  
17       ~~reasonable transition period to support the statewide~~  
18       ~~deployment of these advanced telecommunications~~  
19       ~~services, including, but not limited to, the use of~~  
20       ~~strategic community access points in public facilities~~  
21       ~~such as education, library, and health care~~  
22       ~~facilities;~~



1       ~~(4) Ensure that consumers are given the information~~  
2           ~~necessary to make informed choices among the~~  
3           ~~alternative telecommunications carriers and services,~~  
4           ~~and~~

5       ~~(5) Promote affordable access throughout the State to~~  
6           ~~enhanced government information and services,~~  
7           ~~including education, health care, public safety, and~~  
8           ~~other government services.~~

9       ~~The commission shall administer the universal service~~  
10       ~~program, including the establishment of criteria by which the~~  
11       ~~purposes of the program are met." ]~~

12       SECTION 51. Section 269-42, Hawaii Revised Statutes, is  
13       repealed.

14       ~~[ "§269-42 Universal service program; contributions. (a)~~  
15       ~~There is established outside of the state treasury a special~~  
16       ~~fund to be known as the universal service fund to be~~  
17       ~~administered by the commission to implement the policies and~~  
18       ~~goals of universal service. The fund shall consist of~~  
19       ~~contributions from the sources identified in subsections (c) and~~  
20       ~~(f). Interest earned from the balance of the fund shall become~~  
21       ~~a part of the fund. The commission shall adopt rules regarding~~  
22       ~~the distribution of moneys from the fund including~~



1 ~~reimbursements to carriers for providing reduced rates to low-~~  
2 ~~income, elderly, residents of underserved or rural areas, or~~  
3 ~~other subscribers, as authorized by the commission.~~

4 ~~(b) The commission may allow distribution of funds~~  
5 ~~directly to customers based upon a need criteria established by~~  
6 ~~the commission.~~

7 ~~(c) A telecommunications carrier or other person~~  
8 ~~contributing to the universal service program may establish a~~  
9 ~~surcharge which is clearly identified and explained on~~  
10 ~~customers' bills to collect from customers contributions~~  
11 ~~required under this section.~~

12 ~~(d) Telecommunications carriers may compete to provide~~  
13 ~~services to underserved areas using funds from the universal~~  
14 ~~service program. For the purposes of this section, "underserved~~  
15 ~~areas" means those areas in the State that lack or have very~~  
16 ~~limited access to high capacity, advanced telecommunications~~  
17 ~~networks and information services, including access to cable~~  
18 ~~television.~~

19 ~~(e) The commission shall require all telecommunications~~  
20 ~~carriers to contribute to the universal service program. The~~  
21 ~~commission may require a person other than a telecommunications~~  
22 ~~carrier to contribute to the universal service program if, after~~



1 ~~notice and opportunity for hearing, the commission determines~~  
2 ~~that the person is offering a commercial service in the State~~  
3 ~~that directly benefits from the telecommunications~~  
4 ~~infrastructure, and that directly competes with a~~  
5 ~~telecommunications service provided in the State for which a~~  
6 ~~contribution is required under this subsection.~~

7 ~~(f) The commission shall designate the method by which the~~  
8 ~~contributions under subsection (c) shall be calculated and~~  
9 ~~collected. The commission shall consider basing contributions~~  
10 ~~solely on the gross operating revenues from the retail provision~~  
11 ~~of intrastate telecommunications services offered by the~~  
12 ~~telecommunications carriers subject to the contribution." ]~~

13 SECTION 52. Section 269-43, Hawaii Revised Statutes, is  
14 repealed.

15 ~~["~~§269-43~~ Carriers of last resort. (a) The commission~~  
16 ~~may define and designate local exchange service areas where the~~  
17 ~~commission has determined that providing universal service funds~~  
18 ~~to a single provider will be the most appropriate way to ensure~~  
19 ~~service for these areas.~~

20 ~~(b) The commission shall determine the level of service~~  
21 ~~that is appropriate for each designated local exchange service~~  
22 ~~area and shall invite telecommunications providers to bid for a~~



1 ~~level of service that is appropriate. The successful bidder~~  
2 ~~shall be designated the carrier of last resort for the~~  
3 ~~designated local exchange service area for a period of time and~~  
4 ~~upon conditions set by the commission. In determining the~~  
5 ~~successful bidder, the commission shall take into consideration~~  
6 ~~the level of service to be provided, the investment commitment,~~  
7 ~~and the length of the agreement, in addition to the other~~  
8 ~~qualifications of the bidder.~~

9 ~~(c) The universal service fund shall also provide service~~  
10 ~~drops and basic service at discounted rates to public~~  
11 ~~institutions, as stated in section 269-41.~~

12 ~~(d) The commission shall adopt rules pursuant to chapter~~  
13 ~~91 to carry out the provisions of this section." ]~~

14 SECTION 53. Chapter 440G, Hawaii Revised Statutes, is  
15 repealed.

16 SECTION 54. All rules, policies, procedures, orders,  
17 certificates of public convenience and necessity, franchises,  
18 guidelines, and other material adopted, issued, or developed by  
19 the department of commerce and consumer affairs and the public  
20 utilities commission to implement provisions of the Hawaii  
21 Revised Statutes that are reenacted or made applicable to the  
22 Hawaii broadband commissioner by this Act, shall remain in full



1 force and effect until amended or repealed by the Hawaii  
2 broadband commissioner. In the interim, every reference to the  
3 department of commerce and consumer affairs, director of  
4 commerce and consumer affairs, public utilities commission, or  
5 chairperson of the public utilities commission in those rules,  
6 policies, procedures, orders, franchises, guidelines, and other  
7 material is amended to refer to the Hawaii broadband  
8 commissioner as appropriate.

9 SECTION 55. All deeds, leases, contracts, loans,  
10 agreements, permits, or other documents executed or entered into  
11 by or on behalf of the department of commerce and consumer  
12 affairs and the public utilities commission pursuant to the  
13 provisions of the Hawaii Revised Statutes that are reenacted or  
14 made applicable to the Hawaii broadband commissioner by this  
15 Act, shall remain in full force and effect. Effective upon  
16 approval of this Act, every reference to the department of  
17 commerce and consumer affairs, director of commerce and consumer  
18 affairs, public utilities commission, or chairperson of the  
19 public utilities commission therein shall be construed as a  
20 reference to the Hawaii broadband commissioner as appropriate.

21 SECTION 56. During fiscal year 2009-2010, fifty per cent  
22 of the moneys collected by the public utilities commission from



1 telecommunications carriers and deposited into the public  
2 utilities commission special fund and cable television  
3 subaccount shall be deposited into the commissioner special fund  
4 established under -20 to provide appropriations for the  
5 Hawaii broadband commissioner.

6 SECTION 57. All appropriations, records, equipment,  
7 machines, files, supplies, contracts, books, papers, documents,  
8 maps, and other personal property heretofore made, used,  
9 acquired, or held by the department of commerce and consumer  
10 affairs and the public utilities commission relating to the  
11 functions transferred to the Hawaii broadband commissioner shall  
12 be transferred with the functions to which they relate.

13 SECTION 58. The cable television division of the  
14 department of commerce and consumer affairs shall transfer four  
15 existing positions and the department of commerce and consumer  
16 affairs shall transfer ten existing positions to the service of  
17 the Hawaii broadband commissioner. The positions selected for  
18 transfer shall reasonably relate to the functions of the Hawaii  
19 broadband commissioner and be paid out of existing cable  
20 franchise fees or public utilities commission fee transfers.

21 All officers and employees whose functions are transferred  
22 by this Act shall be transferred with their functions and shall



1 continue to perform their regular duties upon their transfer,  
2 subject to the state personnel laws and this Act.

3 No officer or employee of the State having tenure shall  
4 suffer any loss of salary, seniority, prior service credit,  
5 vacation, sick leave, or other employee benefit or privilege as  
6 a consequence of this Act, and such officer or employee may be  
7 transferred or appointed to a civil service position without the  
8 necessity of examination; provided that the officer or employee  
9 possesses the minimum qualifications for the position to which  
10 transferred or appointed; provided further that subsequent  
11 changes in status may be made pursuant to applicable civil  
12 service and compensation laws.

13 An officer or employee of the State who does not have  
14 tenure and who may be transferred or appointed to a civil  
15 service position as a consequence of this Act shall become a  
16 civil service employee without the loss of salary, seniority,  
17 prior service credit, vacation, sick leave, or other employee  
18 benefits or privileges and without the necessity of examination;  
19 provided that such officer or employee possesses the minimum  
20 qualifications for the position to which transferred or  
21 appointed.



1           If an office or position held by an officer or employee  
2 having tenure is abolished, the officer or employee shall not  
3 thereby be separated from public employment, but shall remain in  
4 the employment of the State with the same pay and classification  
5 and shall be transferred to some other office or position for  
6 which the officer or employee is eligible under the personnel  
7 laws of the State as determined by the head of the department or  
8 the governor.

9           SECTION 59. The Hawaii broadband commissioner shall  
10 convene a work group to develop procedures for streamlined  
11 permitting functions that are applicable to the development of  
12 broadband services and broadband technology which are normally  
13 available to state and local governments for the use or  
14 development of broadband service or broadband technology.  
15 Members of the work group shall include:

- 16           (1) The Hawaii broadband commissioner established in  
17           section 3 of this Act;
- 18           (2) The mayor of the county of Hawaii, or the mayor's  
19           designee;
- 20           (3) The mayor of the city and county of Honolulu, or the  
21           mayor's designee;



- 1 (4) The mayor of the county of Kauai, or the mayor's  
2 designee;
- 3 (5) The mayor of the county of Maui, or the mayor's  
4 designee;
- 5 (6) The chairperson of the Hawaii broadband task force  
6 established by Act 2, First Special Session Laws of  
7 Hawaii 2007; and
- 8 (7) Two representatives of state agencies with  
9 jurisdiction over land use and permitting at the state  
10 level.

11 SECTION 60. The work group established under section 59  
12 shall submit to the legislature no later than January 1, 2010, a  
13 report with its recommended procedures for streamlining and  
14 expediting all permitting functions normally available to state  
15 and local governments for the use or development of broadband  
16 service or broadband technology. The procedures shall be  
17 consistent across all counties and shall provide that any  
18 permitting fees and revenues traditionally accruing to the  
19 counties that relate to the use or development of broadband  
20 service or broadband technology will continue to accrue to the  
21 counties once the procedures go into effect.



1           SECTION 61. The legislative reference bureau shall review  
2 all relevant laws in the Hawaii Revised Statutes relating to  
3 broadband technology, telecommunications, infrastructure  
4 development, permitting requirements, and any other issues the  
5 legislative reference bureau deems appropriate, including all  
6 acts passed by the legislature during this regular session of  
7 2009, whether enacted before or after the effective date of this  
8 Act, unless such acts specifically provide that this Act is  
9 being amended, and make recommendations on how these laws may be  
10 amended to conform to this Act or facilitate the implementation  
11 of this Act. The legislative reference bureau shall submit a  
12 report of its findings and recommendations, including proposed  
13 legislation, to the legislature no later than twenty days prior  
14 to the convening of the 2010 regular session.

15           SECTION 62. There is appropriated out of the federal funds  
16 subaccount of the commissioner special fund the sum of  
17 \$                   or so much thereof as may be necessary for fiscal  
18 year 2008-2009 and the same sum or so much thereof as may be  
19 necessary for fiscal year 2009-2010 to purchase broadband  
20 facilities, services, or equipment or to fund broadband-related  
21 infrastructure projects pursuant to this Act.



1           The sums appropriated shall be expended by the Hawaii  
2 broadband commissioner for the purposes of this Act.

3           SECTION 63. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 64. This Act shall take effect on July 1, 2112;  
6 provided that any decision or order executed by the public  
7 utilities commission prior to the enactment of this Act shall  
8 remain in full force and effect until such time as the Hawaii  
9 broadband commissioner may amend or repeal the decision or order  
10 under the Hawaii broadband commissioner's jurisdiction.



**Report Title:**

Hawaii Broadband commissioner; Broadband Regulation; Broadband Franchising; Broadband Permitting

**Description:**

Implements key recommendations of the Hawaii broadband task force by establishing the Hawaii broadband commissioner (HBC) in the Department of Commerce and Consumer Affairs (DCCA). Transfers functions relating to telecommunications from the public utilities commission to the HBC and functions relating to cable services from DCCA to the HBC. Establishes a work group to develop procedures to streamline state and county broadband regulation, franchising, and permitting and report to the legislature. Effective July 1, 2012. (SB1680 HD1)

